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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923.

No. 288.

THE UNITED STATES EX REL. CHICAGO, NEW YORK &
BOSTON REFRIGERATOR COMPANY, ~~APPELLANT~~,
Plaintiff in Error

vs.

INTERSTATE COMMERCE COMMISSION.

referred to
~~APPEAL FROM~~ THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA.

FILED APRIL 13, 1923.

(29,542)



(29,542)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 288.

THE UNITED STATES *EX REL.* CHICAGO, NEW YORK &
BOSTON REFRIGERATOR COMPANY, APPELLANT,

vs.

INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 3882.

UNITED STATES ex Relatione CHICAGO, NEW YORK & BOSTON
REFRIGERATOR COMPANY, a Corporation, Appellant,

vs.

INTERSTATE COMMERCE COMMISSION.

a Supreme Court of the District of Columbia.

At Law.

No. 66405.

UNITED STATES ex Relatione CHICAGO, NEW YORK & BOSTON
REFRIGERATOR COMPANY, a Corporation, Petitioner,

vs.

INTERSTATE COMMERCE COMMISSION, Respondent.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 In the Supreme Court of the District of Columbia.

At Law.

No. 66405.

UNITED STATES ex Rel. CHICAGO, NEW YORK & BOSTON REFRIG-
ERATOR COMPANY, a Corporation,

vs.

INTERSTATE COMMERCE COMMISSION.

Petition for Mandamus and Rule to Show Cause.

Filed February 28, 1922.

To the Honorable the Judges of the Supreme Court of the District
of Columbia:

The petition of the relator respectfully shows:

1. That the relator, Chicago, New York & Boston Refrigerator Company is a corporation duly incorporated under and pursuant to the laws of the State of Maine and has its principal office in the City of Chicago and State of Illinois. All of its capital stock is owned by Grand Trunk Railway Company of Canada, a railroad corporation of Canada, which owns and operates railroads and systems of transportation in the States of Michigan, Maine, New Hampshire, Vermont and elsewhere in the United States.

2. Relator is, and, with the exception of the period of Federal Control, was at all times hereinafter mentioned and for many years prior thereto, had been a common carrier engaged in the operation of a system of transportation known as a refrigerator car line and which during all of said times consisted of a large number of refrigerator cars, icing stations, icing platforms and other equipment and property. The business of relator was during all of said times conducted and its system of transportation operated as set forth fully in its petition to the Interstate Commerce Commission hereinafter mentioned and referred to as Relator's Exhibit four.

3. That on December 26, 1917, the President of the United States issued a proclamation effective December 28, 1917, taking
2 possession and assuming control

"of each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the continental United States and consisting of railroads and owned or controlled systems of coastwise and inland transportation whether operated by steam or electric power and including also, terminals, terminal companies and terminal associations, sleeping and parlor cars, private cars, and private car lines, elevators, warehouses, telegraph and telephone lines and all other equipment, and appurte-

nances commonly used upon or operated as a part of such rail or combined rail and water systems of transportation”

and that among the systems of transportation thus passing under the control of the President was the system of transportation of relator, and that said system was under Federal Control at the time Federal Control terminated on March 1, 1920, at 12:01 o'clock, A. M. On said last named day the possession and control of relator's system of transportation was relinquished by the President and restored to it.

4. That relator has a written contract with the United States which is the standard contract between the United States and the carriers taken under Federal Control and not a cooperative contract or waiver, which fixes the amount of just compensation under the Federal Control Act to which relator is entitled for the taking of its property as aforesaid, and for the use thereof during the period of Federal Control, and which names as annual compensation for such taking and use the sum of \$72,855.59.

5. That section 209 of the Transportation Act, 1920, provides that carriers whose systems of transportation were under Federal Control at the termination thereof on March 1, 1920, should for the six months beginning March 1, 1920, be guaranteed by the United States a certain income specified in said act, if the carrier should on or before March 15, 1920, file with the Interstate Commerce Commission a written statement that it accepted all the provisions of said Section 209.

3 6. That on March 15, 1920, the relator filed with the Interstate Commerce Commission a written statement accepting all of the provisions of Section 209 of the Transportation Act, 1920. A certified copy of such written statement is hereto attached, marked “Relator's Exhibit one” and is hereby made a part hereof.

7. That during the six months' period beginning March 1, 1920, relator operated its said system of transportation and such operation resulted in a loss, and that relator's railway operating income for the guaranty period as a whole was less than one half the amount named in its contract with the United States as annual compensation for the use of its property during Federal Control and that by reason thereof there is due to the relator, Chicago, New York & Boston Refrigerator Company, under the provisions of said Section 209 of the Transportation Act, 1920, the sum of \$373,270.76.

8. That relator has made and filed with the Interstate Commerce Commission returns as called for by its orders of October 18, 1920 and January 5, 1921, which Exhibit will set forth the financial result of the operation of petitioner's system of transportation for the six months' period beginning March 1, 1920, and is willing to furnish any additional information or report that may be called for by said Interstate Commerce Commission.

9. That on the 9th day of May, 1921, relator made application to the Interstate Commerce Commission to definitely ascertain that there was at least the sum of \$150,000 due to it under the guaranty contained in Section 209 aforesaid, and, pending the determination of the whole amount due relator, to certify to the Secretary of the

Treasury of the United States, the amount thus definitely ascertained to be due. With said application relator presented a printed statement of the facts upon which it based its claim to the guaranty aforesaid. A copy of said printed statement of facts with the Exhibits therein referred to is hereto attached marked "Relator's Exhibit two" and is hereby made a part hereof. Said Exhibit comprises four printed pages, one "Straight Bill of Lading" form, and one "Order Bill of Lading" form. On the 26th day of September, 1921, said application was heard and considered by the Commission upon the facts set forth in said Exhibit two, and afterwards, and on the 31st day of October, 1921, said Interstate Commerce Commission filed in the office of its Secretary its report containing its findings of fact and conclusions therein, and found and concluded:

"that the Chicago, New York & Boston Refrigerator Company is not a carrier by railroad within the meaning of Section 209 of the Transportation Act, 1920, and is not subject to the guaranty provisions of that section. Its application for a partial payment thereunder must therefore be denied. An order will be entered accordingly."

On the same day an order was entered by the Interstate Commerce Commission dismissing said application. A certified copy of said report and order is hereto attached marked "Relator's Exhibit three" and is hereby made a part hereof.

10. That thereafter and on the 29th day of December, 1921, relator filed with said Interstate Commerce Commission its verified petition in which was set forth fully the business of relator, its properties, the method of operating the same, and other material facts and prayed that said Interstate Commerce Commission would ascertain and certify to the Secretary of the Treasury of the United States the amounts necessary to make good the guaranty to relator contained in said Section 209, of the Transportation Act, 1920. A certified copy of this last named petition is hereto attached marked "Relator's Exhibit four" and is hereby made a part hereof. That said petition was heard and determined by the Commission upon the facts set forth therein, and thereafter, and on January 9, 1922, the Interstate Commerce Commission made and filed in the office of its Secretary its report containing its findings of fact and conclusions thereon and therein found and concluded

"that the Chicago, New York & Boston Refrigerator Company was not, during any part of the guaranty period a carrier by railroad within the meaning of Section 209 of the Transportation Act, 1920, and that the provisions of that section do not apply to that company. We are without authority to issue a certificate entitling the claimant to a guaranty payment. An order dismissing the application will be entered accordingly."

On the same day an order was entered by said Interstate Commerce Commission, pursuant to said report, dismissing said application. A

certified copy of said last mentioned report and order is hereto attached marked "Relator's Exhibit five" and is hereby made a part hereof.

11. That the returns mentioned in this petition and exhibits attached thereto, as having been made pursuant to the orders of the Interstate Commerce Commission of October 18, 1920 and January 5, 1921, and the additional return mentioned in "Relator's Exhibit four," are exhibits of the result, in a financial way, of the operation of relator's system of transportation, aforesaid, and do not in any way change, enlarge, or controvert the facts set forth herein. That the findings and order set forth in "Relator's Exhibit three" were based upon the facts set forth in "Relator's Exhibit two;" that the findings and order set forth in "Relator's Exhibit five" were based upon the facts set forth in "Relator's Exhibit five," and that there were no other or further facts introduced at either hearing hereinbefore mentioned.

12. That the refusal of the Interstate Commerce Commission to ascertain and certify to the Secretary of the Treasury of the United States, the amounts necessary to make good the guaranty to relator contained in Section 209 aforesaid is based upon the erroneous belief that under the facts as hereinbefore set forth, relator is not a "carrier by railroad" within the meaning of Section 209 of the Transportation Act, 1920, and upon no other ground.

13. That relator is advised and therefore alleges that the respondent, the Interstate Commerce Commission, is without discretion in the premises, and that it was, and is the plain duty of respondent to ascertain and certify to the Secretary of the Treasury of the United States, the amounts necessary to make good the guaranty contained in Section 209 of the Transportation Act, 1920, but that respondent has entirely failed, neglected and refused and still fails, neglects and refuses so to do.

Wherefore, since relator has no remedy save by this procedure, it prays this Honorable Court:

1. That a rule may issue requiring the respondent, the Interstate Commerce Commission, to appear and answer this petition within such time as the court may deem proper, and to show cause why the writ of mandamus should not issue.

2. That the writ of mandamus may issue directed to said respondent, the Interstate Commerce Commission, requiring it to ascertain and certify to the Secretary of the Treasury of the United States, the amounts necessary to make good the guaranty to relator contained in Section 209 of the Transportation Act, 1920.

CHICAGO, NEW YORK & BOSTON
REFRIGERATOR CO.,

By C. R. COOPER,

President,

WILLIAM G. WHEELER,

Attorney for Relator.

7 STATE OF ILLINOIS,
Cook County, ss:

I do solemn-y swear that I am the President of the relator, the Chicago, New York & Boston Refrigerator Company, and have authority to make this affidavit on behalf of said relator; that I have read the foregoing petition, and that the statements made therein as upon personal knowledge are true and that the statements made therein upon information and belief, I believe to be true.

C. R. COOPER

Subscribed and sworn to before me this 9th day of February, 1922.
[SEAL.] LETTE M. SORENSEN,

Notary Public for Illinois.

My commission expires March 11, 1925.

8 Interstate Commerce Commission,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of acceptance of the Chicago, New York & Boston Refrigerator Company of the provisions of Section 209 of the Transportation Act, 1920, filed March 15, 1920, in Finance Docket No. 383, the original of which is now on file and of record in the office of this Commission.

In witness whereof, I have hereunto set my hand and affixed the seal of said Commission this 6th day of February, A. D., 1922.

[SEAL.]

GEORGE B. MCGINTY.

SECRETARY OF THE INTERSTATE COMMERCE COMMISSION.

Relator's Exhibit One.

9 Mar. 15, '20. 450,543.

Chicago, New York and Boston Refrigerator Company.

The Chicago, New York & Boston Refrigerator Company hereby accepts all of the provisions of Section 209 of the Act of Congress, known as the Transportation Act 1920, approved February 28th 1920.

Portland, Me., March 12th, 1920.

CHICAGO, NEW YORK & BOSTON
REFRIGERATOR CO.,

(Signed)
[SEAL.]

By C. R. COOPER,
President and General Manager.

Attest:

(Signed) GEO. H. COURTEMANCHE

Secretary,

Subscribed and sworn to before me at Portland, Me. this 12th day of March 1920.

(Signed)

[SEAL.]

ELMER PERRY,

Notary Public.

10

Mar. 15, '20. 450,543.

Portland, March 12th, 1920.

I, George H. Courtemanche, Secretary of the Chicago, New York and Boston Refrigerator Company, hereby certify that the following is a true and correct extract from the minutes of a Directors' meeting of said Company held at Portland, Maine, on March 12th, 1920, which meeting was duly called in accordance with the by-laws and at which a quorum was present.

"Resolved, that the President and General Manager and Secretary be authorized and directed to make, execute and file on or before March 16th, 1920 with the Interstate Commerce Commission, a written statement under this Company's corporate seal, that it does accept all the provisions of Section 209 of the Act of Congress known as the Transportation Act, 1920, approved February 28th, 1920."

Attest:

(Signed)

[SEAL.]

GEO. H. COURTEMANCHE,

Secretary.

STATE OF MAINE,

Cumberland County:

Portland, March 12th, A. D. 1920.

Personally appeared the above named George H. Courtemanche and made oath that the foregoing statement subscribed by him is true.

Before me,

(Signed)

[SEAL.]

GEORGE T. SPEAR,

Notary Public.

11

Mar. 15, '20. 450,543.

Portland, Maine, March 12th, 1920.

I, Elmer Perry, Clerk of the Chicago, New York and Boston Refrigerator Company, hereby certify that the following is a true and correct extract from the minutes of a special meeting of the stockholders of said Company held at Portland, Maine, on March 12th, 1920, which meeting was duly called in accordance with the by-laws and at which a quorum was present.

"On motion duly seconded it was voted that the Directors be authorized to accept all the provisions of Section 209 of the Act of Congress known as the Transportation Act, 1920, approved February 28th, 1920.

Upon the foregoing motion and proposition a stock vote was taken, Elmer Perry acting as teller, who reported as follows:

Whole number of votes cast, 11,284.

Necessary for adoption, 5,643.

There were eleven thousand, two hundred and eighty-four votes cast in the affirmative being and representing all the stock present and represented at said meeting, and a majority of the stock of said corporation issued, as shown on the foregoing pages, and no votes in the negative.

The report of the teller was accepted, and the motion was duly declared unanimously adopted and carried."

Attest:

(Signed)

ELMER PERRY,
Clerk.

STATE OF MAINE,
Cumberland County:

Portland, March 12th, A. D. 1920.

Personally appeared the above named Elmer Perry and made oath that the foregoing statement subscribed by him is true.

Before me,

(Signed)

GEORGE T. SPEAR,
Notary Public.

[SEAL.]

12 Before the Interstate Commerce Commission.

In re the Application of the CHICAGO, NEW YORK & BOSTON REFRIGERATOR COMPANY for Certification of a Partial Payment under Section 209 of the Transportation Act, 1920.

The Chicago, New York & Boston Refrigerator Company has applied to the Commission for an advancement of moneys due to it under the guarantees contained in Section 209 of the Transportation Act, 1920.

The Facts.

The Company is incorporated under the laws of the State of Maine. It operates under the trade names of New York Despatch Refrigerator Line and National Despatch Refrigerator Line. Mr. C. R. Cooper is President of the Company and its General Manager. All of the capital stock of the Company is owned by the Grand Trunk Railway Company. Its property consists of refrigerator cars, ice plants, repair shops, icing platforms and stations and other property which naturally forms a part of a refrigerator car line system. Its business is the carrying of freight in refrigerator cars from western to eastern markets. The main offices of the Company are in Chicago where

Relator's Exhibit Two (Sheet One).

13 fifty per cent of the Company's business originates. In Chicago it rebuilds, repairs, cleans and paints its refrigerator cars, and distributes them to western shipping points such as St. Paul, Minn.; Kansas City, Mo.; Omaha, Neb., and Des Moines, Ia. At

these points the Company maintains agents who solicit freight for shipment in its cars, route shipments, give shipping instructions and, when necessary, supervise loading and icing. These agents also give advice to farmers, dairymen, etc., as to the kind and quantity of products it is desirable to ship, the proper market, and in various other ways assist shippers. The work of these agents is to all intents and purposes the same as that of the soliciting forces of railroad companies that maintain and operate perishable freight departments of their own. All shipments obtained are routed over Grand Trunk lines, which carry the shipments to junction points with the Lehigh Valley, the Delaware & Lackawanna & Western or Central Vermont railroad Company and these latter lines carry shipments to destination. In Chicago the Company in addition to soliciting business, loads and ices the cars, gives icing instructions to eastern connections, issues its own bill of lading to the shipper, which covers to eastern destination, collects freight charges on prepaid shipments. When cars from points west of Chicago are reconsigned the Company takes up the original bill of lading, issues its own bill in place thereof, collects switching and reconsignment charges and sends the car forward under proper instructions. The cars of the Company carry no refrigerated freight except that which is solicited and obtained by the company's agents. It has an arrangement or agreement with the Grand Trunk, the Lehigh Valley, the Delaware, Lackawanna & Western and the Central Vermont whereby the compensation for the haul is divided between the Refrigerator Car Company and the railroad lines on a percentage basis, and in addition the Company receives a mileage allowance for mileage traveled by its cars. If its cars move on lines other than those of the companies above mentioned it receives a mileage allowance but no other compensation. The Company collects cars which have been unloaded at eastern destination points and secure their return to Chicago where they are repaired, rebuilt and cleaned as necessary and again distributed for loading. The services performed by the Company in connection with refrigerated products moved in its cars comprise all services necessary except the furnishing of motive power, road-bed and rails upon which the car moves. All disbursements which are made by the railroad companies to the Chicago, New York & Boston Refrigerator Company are charged by them in operating accounts. The Company itself has no revenue which would not be reflected in the operating accounts of a railroad company furnishing its own system of refrigerator cars. In effect the Company is a department or division of the Grand Trunk Railway Company taking charge for it of its refrigerator car service. The enterprise in which the Company is engaged is a joint one, the car company and the railway company each furnishing a portion of the service and facilities necessary in order that the merchandise may be transported. All cars of the Company are marked in the Company's corporate name or in one of its trade names and thoroughly identified as the property of this applicant. If repairs are made to these cars by other railroad companies the bill therefor is presented to and paid by this Company, its cars being handled under the rules of the Mas-

ter Car Builders' Association the same as the cars of any other railroad company.

The company's activities regarding loading of freight in its cars has resulted in an improved method of loading and consequent saving in loss and damage claims. On eggs shipped in the company's

Relator's Exhibit Two (Sheet Two").

15 cars in 1912 the loss and damage claims paid amounted to 12½ per cent of the gross revenue on that commodity. In 1917 loss and damage claims paid on the same commodity amounted to only 1.17 per cent of gross revenue on eggs. This saving was the result of the careful and efficient efforts of the company regarding the method of loading the car with the eggs. Similar savings have been accomplished on other commodities.

The company investigates, adjusts, vouchers and pays loss and damage claims for freight moved in its cars, and bills upon connections for their proper proportion thereof.

All of the cars and other property of the Company were taken under Federal control, operated by the Director General of Railroads and remained under Federal control until the date when such control terminated under the Transportation Act of 1920, when the property was returned to its owner and has been operated by it since that time.

The Company has a contract with the Director General which fixes its just compensation under the Federal Control Act and names as annual compensation the sum of \$72,855.60.

On March 15, 1920, the Company filed with the Commission a written statement accepting all the provisions of Section 209 of the Transportation Act.

It has made and filed its returns pursuant to the orders of the Commission of October 18, 1920, and January 5, 1921. These returns show that during the period from March 1, 1920, to September 1, 1920, the Company's railway operations resulted in a deficit of \$318,171.69.

Copies of the bills of lading hereinbefore referred to are attached and marked Exhibits A and B.

(Here follow Exhibits A and B, marked pages 16 and 17.)

18

Interstate Commerce Commission,

Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of report and order of the Commission filed and entered October 31, 1921, in Finance Docket No. 383, In the Matter of the Application of the Chicago, New York & Boston Refrigerator Company for a Partial Payment under Section 209 of the Transportation Act, 1920, the original of which is now on file and of record in the office of this Commission.

Form 924

E. S. COOPER, Pres. and Gen. Mgr.
Room 203, 121 Quincy St., Worcester

Agent's No.

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading, as

192. From _____
property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, packed and destined as indicated below, which said Compy. agrees to carry to its usual place of delivery at said destination, if en-
gined, and otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, at each carrier's of-
fice, that the carrier shall be responsible for the safe delivery of the property to the consignee at each place at any time interested in all or any of
said property over all or any portion hereunder shall be subject to all the conditions, whether printed or written, herein-
before set forth, and which are agreed to by the shipper and accepted for himself and his assign-
(including conditions on back hereof) and which are agreed to by, the shipper and accepted for himself and his assign-

The Rate of Freight from.

in Cents per 100 Lbs.

[illegible]

(Mail Address—Not for purposes of Delivery.)

Consigned to

Destination _____ State of _____ County of _____

Route _____ Car Initial _____ Car No. _____

No. FURNISHED	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	GROSS GOLDEN
	<p><i>in the</i></p> <p>No. 3882, Special Calendar No. 30. United States, ex relations, Chicago, New York & Boston Re- frigerator Company, a Corporation, Appellant, vs. Interstate Commerce Commission.</p>			
	<p><i>Related Exhibits (see Appendix)</i></p>			

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received \$ _____
to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

For _____
(The signature here indicates only the amount prepaid.)

Charges Advanced:

\$ _____

Shinner

16

NEW YORK DESPATCH REFRIGERATOR LINE
NATIONAL DESPATCH REFRIGERATOR LINE
 CHICAGO, NEW YORK AND BOSTON REFRIGERATOR CO.

R. S. WOLDEN, Agent,
8 Madison St., New York

R. B. RYBICKI, Agent
Finance Bldg., Philadelphia, Pa.

J. A. FORSTH, Agent
Food and Product Corp., Boston, Mass.

W. A. LALLY, General Agent,
Room 203, 181 Quincy St., Chicago

C. R. GOSPER, Pres. and Gen. Mgr.
Rogers Bldg. 1917 Perry St. Chicago

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NGUYEN, S. H.

ORDER BILL OF LADING—ORIGINAL

RECEIVED subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading, as

192 From

From

[illegible]

493

The Rate of Freight from

is in Cents per 100 lbs.

[illegible]

Mail Address - Not for purposes of University.

Consigned to **ORDER OF**

Destination _____ State of _____ County of _____

North

At _____ State of _____ County of _____

Route _____ Car Initial _____ Car No _____

NO. PAGE(S)	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	No. 3882, Special Calendar No. 30. United States, ex. relations, Chicago, New York & Boston Re- frigerator Company, & Corporation, Appellant, vs. Interstate Commerce Commission.			Page 17.
	<i>Relation Exhibit for</i> <i>Chicago, New York & Boston</i>			

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received \$_____ to apply in prepayment of the charges on the property described herein.

Area of Cabin:

Per _____
(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

8

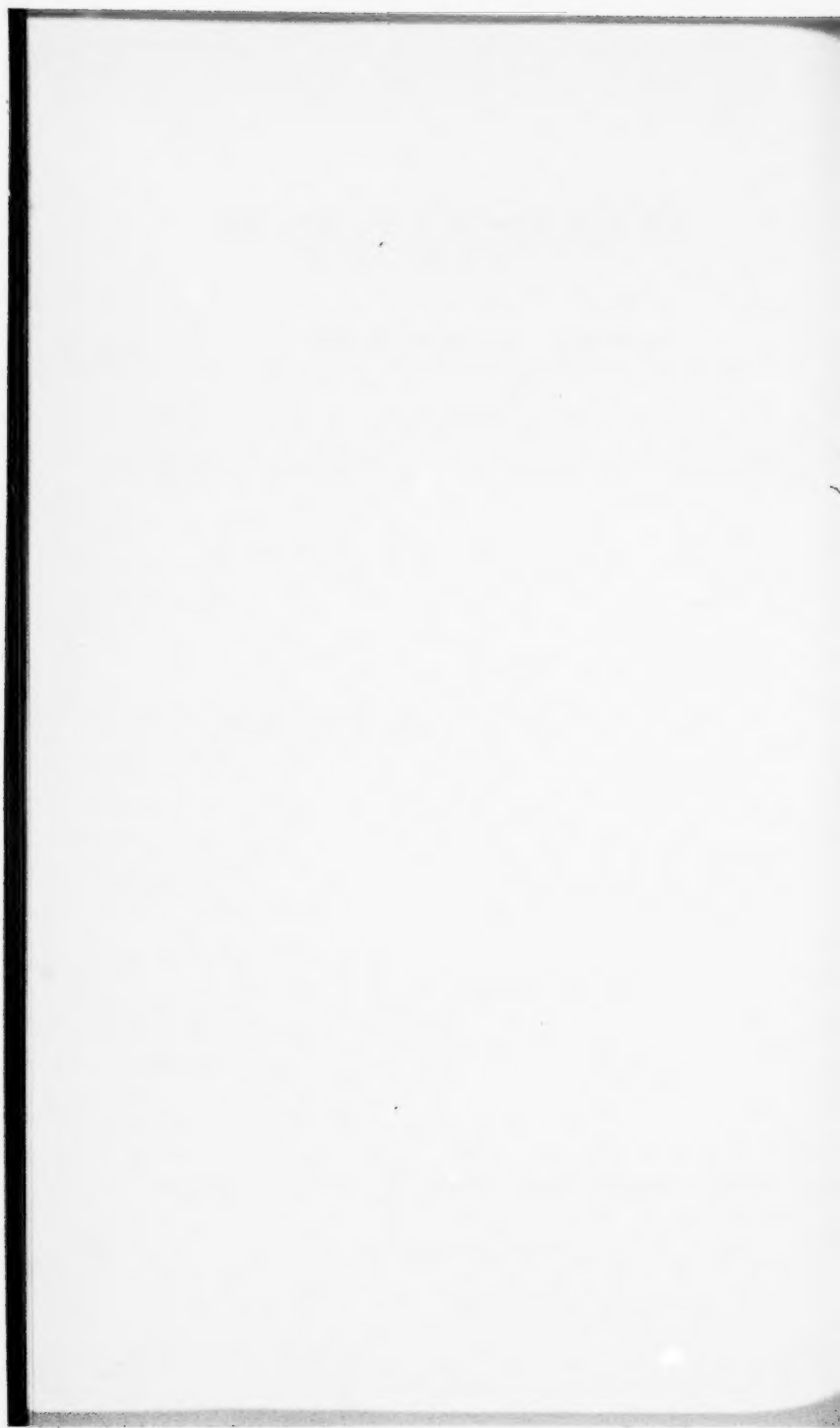
Shipper

Agent:

Per _____

*This Bill of Lading is to be signed by the shipper and agent of the carrier (having same)

Per 1997



In witness whereof, I have hereunto set my hand and affixed the Seal of said Commission this 6th day of February, A. D., 1922.

[SEAL.]

GEORGE B. MCGINTY,

Secretary of the Interstate Commerce Commission.

Relater's Exhibit Three.

19

Interstate Commerce Commission.

Finance Docket No. 383.

In the Matter of the Application of the CHICAGO, NEW YORK & BOSTON REFRIGERATOR COMPANY for a Partial Payment under Section 209 of the Transportation Act, 1920.

Submitted September 26, 1921. Decided October 31, 1921.

The Chicago, New York & Boston Refrigerator Company held not to be subject to the guaranty provisions of section 209 of the transportation act, 1920. Application dismissed.

William G. Wheeler for claimant.

Report of the Commission.

By the COMMISSION:

The Chicago, New York & Boston Refrigerator Company, a corporation organized under the laws of the state of Maine, doing business under the trade names of New York Despatch Refrigerator Line and National Despatch Refrigerator Line, on May 10, 1921, applied for a partial payment of the amount which it claimed to be due from the United States as a guaranty under section 209 of the transportation act, 1920. The claimant prepared and filed data in the general form required by our orders of October 18, 1920, and January 5, 1921, and submitted briefs and oral argument in support of its application.

From June 1, 1918, to March 1, 1920, the claimant's property was under Federal control and was operated by the Director General under a standard contract which fixed the claimant's annual compensation at \$72,855.60. On March 15, 1920, it filed a statement by which it accepted all the provisions of section 209. Having set forth facts in its application which, as it believes, disclose that its income for the six months of the guaranty period was less than the amount guaranteed to it by the United States, and having asserted that it is a carrier by railroad whose system of transportation was under Federal control at the time of the termination thereof, the claimant contends that we should determine the amount due it under guaranty and certify such amount to the Secretary of the Treasury for payment.

20

The first question presented by the application is whether or not the status of this company under the law brings it

within our jurisdiction and entitles it to any guaranty payment whatever.

The record contains complete information concerning the nature of the claimant's business, the services it performs for shippers, and its relations with railroads over whose lines its cars are transported. There is no dispute as to the facts. The claimant's capital stock is owned entirely by the Grand Trunk Railway Company. Its property consists mainly of 740 refrigerator cars, together with ice plants, icing stations, repair shops, and other miscellaneous possessions. It also leases 360 refrigerator cars. Pursuant to contracts which it has made with the Grand Trunk Railway Company, the Delaware, Lackawanna & Western Railroad Company, the Lehigh Valley Railroad Company, and the Central Vermont Railway Company, its cars containing dairy products or other freight requiring refrigeration, when moving east of Chicago, are routed exclusively over the lines of these companies, which pay to the claimant a mileage allowance, called "car hire," and a stipulated percentage of the revenues on such traffic, called "commission." At Chicago the claimant has its general headquarters, repair shops, ice plants, and some other facilities, and at this point about 50 per cent of the traffic handled in its cars originates. Its cars move over various lines of railway to points as far west of Chicago as the Missouri River; and its compensation on refrigerator traffic in that territory is limited to a mileage allowance paid by the western lines. Agents of the claimant solicit the freight that moves in its cars, advise shippers concerning their shipments and as to the proper market for their commodities, give shipping instructions, route shipments and, when necessary, supervise loading and icing. In Chicago the claimant rebuilds, repairs, and cleans its refrigerator cars, and directs their distribution to western shipping points as the requirements of the traffic demand. On all traffic which originates in Chicago, or which is there reconsigned, destined to points in the east, the claimant issues bills of lading which cover to destination; but at no other point does it issue any bills of lading. Acting as the agent of the railway companies with which it has contracts providing for percentage allowances of revenue, it vouchers and settles shippers' claims for loss and damage, which have been authorized by the railway companies, and is reimbursed for such disbursements by those companies.

The claimant does not own or control any motive power, road bed, or track, does not file with us annual or monthly reports, does not publish any tariffs, or participate in their publication, and does not collect freight charges for its own account. Shippers of refrigerator traffic pay charges in accordance with the governing tariffs of the railway companies over whose lines the traffic moves. The cars are under the control of the railway companies while on their respective lines, subject only to the requirement that they are not to be diverted from established routes or loaded eastbound with any local freight of the railway, companies, or loaded at all with any freight which will tend to injure such cars or render them unfit for the carriage of refrigerator freight. It is conceded that the

claimant is not a railroad company. Its representatives assert, however, that this company is in effect a department of the Grand Trunk Railway Company, taking charge for it of its refrigerator car service, and that the enterprise in which it is engaged is a joint one, the car company and the railway company each furnishing a portion of the service and facilities necessary in order that merchandise may be transported.

The obligation of the United States in respect of guaranties to carriers which were taken under Federal control and our duty in the matter of ascertaining and certifying the amounts to be paid to such carriers are defined in section 209 of the transportation act, the first paragraph of which is as follows:

"The term 'carrier' means (1) a carrier by railroad or partly by railroad and partly by water, whose railroad or system of transportation is under Federal control at the time Federal control terminates, or which has heretofore engaged as a common carrier in general transportation and competed for traffic, or connected, with a railroad at any time under Federal control; and (2) a sleeping car company whose system of transportation is under Federal control at the time Federal control terminates; but does not include a street or interurban electric railway not under Federal control at the time Federal control terminates, which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic or sale of power, heat, and light, or both;"

We deem it unnecessary in this connection to determine whether or not the Chicago, New York & Boston Refrigerator Company is a common carrier under general definitions of that term. However, we have heretofore regarded this claimant, and others engaged in the same or similar enterprises, as private car-lines and not as common carriers. In the *Matter of Private Cars*, 50 I. C. C., 652, *Perishable Freight Investigation*, 56 I. C. C., 449. No sufficient reason has been advanced for any modification of our conclusions as stated in the reports of those investigations. The Supreme Court, moreover, in a suit arising out of our investigation in the *Private Car case*, held that one of the parties thereto, the Armour Car Lines, was not a common carrier within the meaning of section 1 of the act to regulate commerce, and was not directly subject to our jurisdiction. *Ellis v. Interstate Commerce Commission*, 237 U. S., 434. We are here more particularly concerned with the meaning of the statute above quoted. It contains a definition of the term "carrier." It indicates to our mind that the intention of Congress was to be as specific as possible in designating those carriers for whose benefit the guaranty provisions should operate. The fact that the definition was made precludes the view that the section was intended to apply generally to all agencies of transportation over which in the time of war Federal control was assumed; and the fact that it limits the meaning of "carrier" to (1) "a carrier by railroad or partly by railroad and partly by," and (2) "a sleeping car company," deprives us of authority to certify a payment under the guaranty to any claimant which cannot bring itself clearly within one of these terms.

The claimant's representatives assert that it is a carrier by railroad within the meaning of section 209 because it is engaged in the carriage of freight over or by means of railroads and because it is to all intents and purposes a part of the Grand Trunk Railway engaged in handling a particular kind of that railroad's traffic. They advance the view that the term "carrier" in section 209 of the transportation act is as broad in its meaning as the same term in section 1 of the Federal control act; and they contend, therefore, that this section is to be so construed as to entitle every carrier which was under Federal control on February 29, 1920, to a guaranty payment. We are unable to agree with the claimant, either in its view of its own status or in its interpretation of the statute. The claimant is an equipment-owning company which, however, does not own or operate motive power, road-led, or tracks, does not collect from shippers charges for its services, does not control its cars while in trains, and which leases its cars to railroads to be used in handling a particular kind of traffic, depending for its revenues upon car hire and commissions paid by the rail lines. Obviously it lacks many essential characteristics of a carrier by railroad. Recently in deciding the case of *Wells Fargo & Co. v. Taylor* 254 U. S. 175, arising under the Federal Employers' Liability Act, the Supreme Court said:

"In our opinion the words 'common carrier by railroad,' as used in the act, mean one who operates a railroad as a means of carrying for the public,—that is to say, a railroad company acting as a common carrier. This view not only is in accord with the ordinary acceptation of the words, but is enforced by the mention of cars, engines, tracks, roadbed and other property pertaining to a going railroad; * * * and by the fact that similar words

in the original Interstate Commerce Act had been construed 24 as including carriers operating railroads but not express companies doing business as here shown. 14 C. C. 349; *United States v. Morsman*, 42 Fed. Rep. 448; *Southern Indiana Express Co. v. United States Express Co.* 88 Fed. Rep. 659, 662; S. C. 9 Fed. Rep. 1022. And see *American Express Co. v. United States* 212 U. S., 522, 531, 534."

We find that the Chicago, New York & Boston Refrigerator Company is not a carrier by railroad within the meaning of section 209 of the transportation act, 1920, and is not subject to the guaranty provisions of that section. Its application for a partial payment thereunder must, therefore, be dismissed. An order will be entered accordingly.

25

Order.

At a General Session of the Interstate Commerce Commission Held at Its Office, in Washington, D. C., on the 31st Day of October, 1921.

Finance Docket No. 383.

In the Matter of the Application of THE CHICAGO, NEW YORK & BOSTON REFRIGERATOR COMPANY for a Partial Payment under Section 209 of the Transportation Act, 1920.

Investigation of the matters and things involved in this proceeding having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the application of the Chicago, New York & Boston Refrigerator Company herein be, and the same is hereby, dismissed.

By the Commission:

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

26

Interstate Commerce Commission,

Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of the application of Chicago, New York and Boston Refrigerator Company, filed December 30, 1921, in Finance Docket No. 383, in the Matter of the Application of the Chicago, New York & Boston Refrigerator Company for Payment under Section 209 of the Transportation Act, 1920, the original of which is now on file and of record in the office of this Commission.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Commission this 6th day of February, A. D., 1922.

[SEAL.]

GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

Relator's Exhibit Four.

27 Before the Interstate Commerce Commission.

In re the Application of CHICAGO, NEW YORK AND BOSTON REFRIGERATOR COMPANY for Ascertainment and Certification to the Secretary of the Treasury of the United States of the Amount Necessary to Make Good the Guaranty to said Company under Section 209 of the Transportation Act, 1920, for the Six Months' Guaranty Period Commencing March 1, 1920.

To the Interstate Commerce Commission:

The petition of Chicago, New York and Boston Refrigerator Company respectfully alleges as follows:

Petitioner is a corporation duly incorporated under and pursuant to the laws of the State of Maine and has its principal office of the City of Chicago and State of Illinois.

It is, and with the exception of the period of Federal Control, was at all times hereinafter mentioned and for many years prior thereto, engaged in the operation of a system of transportation, commonly known as a refrigerator car line, which during all of said time was operated substantially as hereinafter set forth. All of its capital stock is owned by Grand Trunk Railway Company of Canada. Its operations are carried on under its corporate name and also under its trade names of "New York Despatch Refrigerator Line" and "National Despatch Refrigerator Line."

By this system of transportation petitioner transports by railroad, poultry, eggs, game, butter, cheese and condensed milk

28 shipped by the public from western to eastern markets.

About one-half of its traffic originates in Chicago, but a considerable tonnage comes from the cities of St. Paul, Minnesota, Kansas City, Missouri, Omaha, Nebraska, and Des Moines, Iowa, and from various Wisconsin and Michigan points. Likewise petitioner handles the local pick-up dairy traffic on the lines of the Grand Trunk Railway Company and subsidiary lines in the State of Michigan. Eastern destination points for petitioner's traffic are New York, Philadelphia and Boston. About eleven hundred refrigerator cars are used by petitioner in the operation of this system of transportation, of which petitioner owns seven hundred and forty cars and leases three hundred and sixty. It owns icing stations and platforms and other similar property. Its cars move regularly to the east over the rails of the Grand Trunk Railway Company, and its subsidiary the Grand Trunk Western Railroad Company, the Delaware Lackawanna and Western Railroad Company, the Lehigh Valley Railroad Company and Central Vermont Railroad Company. With each of these companies petitioner has a contract or agreement. The agreement with the Grand Trunk and Central Vermont Railway Companies provides that the railroad companies shall give to the traffic of petitioner as favorable through rates, time and facilities of every kind as are given to like traffic of any other refrigerator car company

operating over the lines of these railway companies or of the subsidiary companies controlled by the Grand Trunk Railway Company, and that they shall by all proper means cooperate with petitioner for the purpose of giving the public as satisfactory service in all respects as is given by competing refrigerator cars and in return petitioner agrees to route its traffic over the lines of these railway companies. The operation on the other lines of railroad covered by these contracts is substantially the same as over the lines of the Grand Trunk Railway, and its subsidiaries, and the Central Vermont Railway Company.

Petitioner maintains agencies in the cities of St. Paul, Kansas City, Omaha, Des Moines, Milwaukee, Detroit and Chicago, in the West and New York, Philadelphia and Boston, in the East. Petitioner's agents in the West solicit and obtain all of the refrigerated freight that moves in petitioner's cars; they give advice to shippers as to the kind and quantity of products it may be desirable to ship, the market to be selected and as to other matters connected with the shipments. They ascertain and report as to cars required for shippers and advise petitioner so that the cars may be forwarded. When necessary or when requested they supervise icing and loading. In Chicago where one-half of petitioner's business originates, in addition to the performance of the services hereinbefore mentioned, petitioner loads and ices all cars, issues its own bill of lading to the shipper, which bill covers to Eastern destination and is the only bill of lading issued unless the shipment is reconsigned. It collects all prepaid freight charges; it issues icing instructions and furnishes the same to all superintendents and foremen icing stations en route. It causes the car containing the shipment to be placed in the custody of the Grand Trunk Railway Company, through its subsidiary company the Grand Trunk Western Railway Company, with instructions and marking of car for intended destination. Every service necessary in connection with the shipment is rendered by petitioner. The car when put in the custody of the railway company is hauled to destination by the motive power and over the rails of the railway company and its connections, the haul being made and pursuant to the contract between the petitioner and the railway companies aforesaid. Shipments which originate West of Chicago are billed by shippers care of petitioner, Grand Trunk Railway, Chicago or Chicago junctions. If such shipments are reconsigned, all of the reconsigning is done by petitioner which takes up the original bill of lading, issues in place thereof its own bill of lading, collects switching and reconsigning charges and prepaid freight charges, if any, causes the car to be re-iced and reloaded to new destination and placed in the custody of the Grand Trunk Western Railway Company for forwarding under its contract aforesaid under instructions given by petitioner. All bills of lading issued by petitioner are made in its own name signed by its own agents and constitute valid binding contracts between petitioner and the several shippers for the carriage of their goods. Copies of the form of bills of lading are hereto attached.

31 Petitioner holds itself out to the public as willing to carry refrigerated freight of the kinds hereinbefore mentioned from Chicago to destination points on the railroads aforesaid and particularly to New York, Philadelphia and Boston, on terms specified in its bills of lading for rates and charges which are agreed to in each instance and which correspond to the rates and charges from time to time set forth in the published tariffs of the various railroad companies over whose lines the shipment moves. The gross revenue derived from the refrigerated freight carried in petitioner's cars is divided between petitioner and the railroad company or companies interested in the haul according to the terms of the contract with each company. All of these contracts make provision for the division of such revenues on a percentage basis. In addition to the division of the gross revenue there is paid to petitioner by each railroad company a mileage allowance for the number of miles traveled by its cars over the lines of its railroad. If cars move on lines other than the ones with which petitioner has contracts, it receives the mileage allowance but no other compensation. The mileage allowance is the same as is paid by railway companies operating from Chicago eastbound to the Atlantic seaboard, to refrigerator car companies.

32 Petitioner's agencies in New York, Boston and Philadelphia not only solicit business but attend to the business of petitioner on the Atlantic Coast in connection with the system of transportation aforesaid. The duties performed are many in kind but include any attention that is necessary to be given to arriving shipments adjustment and investigation of claims, tracing delayed shipments and in fact all destination duties usually performed by traffic representatives of a carrier by railroad.

When cars have travelled to eastern destination and been unloaded they are at once returned to Chicago where petitioner causes them to be cleaned, repaired, inspected and when necessary repainted or rebuilt. They are then again distributed to western shippers for loading as before, and for shipment to the east, and always on the lines of railroad hereinbefore mentioned. Thus petitioner's cars are confined to definite kinds of freight and move regularly both loaded and unloaded along definite lines between the west and east. A car usually makes the round trip in thirty days.

All of the cars aforesaid are marked with petitioner's corporate name or with one of its trade names, and are completely identified as petitioner's cars. If repairs are made to them by any
33 railroad company the bill therefor is presented to and paid by your petitioner.

Disbursements which are made by railroad companies to your petitioner are chargeable in the operating accounts of such companies.

All revenues and expenses of petitioner are properly chargeable to railway operating accounts as classified by the Interstate Commerce Commission. In the account herewith submitted all entries are in accordance with the Commission's classifications and orders.

Petitioner's system of transportation hereinbefore described was

taken under Federal Control under and by virtue of the Proclamation of the President of the United States dated December 26, 1917 taking possession and assuming control "of each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the continental United States and consisting of railroads and owned or controlled systems of coast-wise and inland transportation engaged in general transportation, whether operated by steam or by electric power, including also terminals, terminal companies and terminal associations, sleeping and parlor cars, private cars, and private car lines, elevators, warehouses, telegraph and telephone lines, and all other equipment, and appurtenances commonly used upon or operated as a part of such rail or combined rail-and-water systems of transportation,"
34 and was under Federal Control up to and including the date when Federal Control terminated to wit: March 1, 1920, at 12.01 o'clock A. M.

Petitioner has a contract with the United States upon the "standard form," so called, and which is not a co-operative contract or waiver, which fixes the amount of compensation under the Federal Control Act to which petitioner is entitled, for the taking of its property as aforesaid, and for the use thereof during the period of Federal control, and names as annual compensation for such taking and use, the sum of \$72,855.59.

During the period of Federal control the cars of petitioner were, for the most part, taken from their regular runs and scattered over the greater part of the United States. When Federal control ended these cars were not restored to the physical custody and possession of the petitioner nor were they returned to the rails of the railroad companies hereinbefore mentioned with which petitioner has contracts, but said cars were suffered to remain scattered in most of the States of the United States, and petitioner was obliged to and did at great expense of both time and money collect said cars and cause them to be restored to the service in which they had been used prior to Federal Control, but during the entire guaranty period petitioner was by such cause, deprived of the use of a large number of its cars to its great financial loss and damage.

35 During Federal Control the cost of operating petitioner's system of transportation very materially increased, due to increased cost of labor and materials and such increased cost continued during the guaranty period and was very greatly in excess of the cost of operation during the three years ended June 30, 1917.

When Federal Control ended petitioner endeavored to secure for itself a larger percentage of the gross revenue from freight carried in its cars, but the railroad companies parties to the agreements hereinbefore mentioned declined to consent thereto for the reason that such additional percentage, if allowed, could not be considered as a disbursement in fixing the amounts due to the railroad companies under the guaranty contained in Section 209 of the Transportation Act of 1920, the provision of which had been duly accepted by all of said railroad companies.

The revenues of petitioner were further restricted by the fact that

carriers subject to the Interstate Commerce Act were by said Transportation Act prohibited from making increases in rates, fares and charges which were in effect February 29, 1920, the said act providing that "All rates, fares and charges and all classifications, regulations, and practices, in anywise changing, affecting or determining any part of the aggregate of rates, fares and charges, or the value of service rendered, which on February 29, 1920, are in effect on the lines of carriers subject to the Interstate Commerce Act, shall continue in force and effect until thereafter changed by State or Federal authority, respectively or pursuant to authority of law," and also provided that all divisions of joint rates, fares and charges in effect February 29, 1920, between lines of carriers subject to the Interstate Commerce Act should likewise continue in effect until changed by mutual agreement or by State or Federal authority, respectively. Your petitioner is informed and believes that it is a carrier subject to the Interstate Commerce Act and that the aforesaid prohibitions apply to your petition- as well as to the aforesaid railroad companies.

On March 15, 1920, petitioner filed with the Interstate Commerce Commission a written statement accepting all of the provisions of Section 209 of the Transportation Act of 1920.

During the six months beginning March 1, 1920, petitioner operated its system of transportation and such operation resulted in a loss so that petitioner's railway operating income for the guaranty period as a whole was less than one-half the amount named in its contract with the United States, as annual compensation for the use of its property during Federal Control.

Petitioner has made and filed returns pursuant to the Commission's order of October 18, 1920, and January 5, 1921.

It presents and files herewith an additional return which completely exhibits and sets forth the result of operation of petitioner's system of transportation for the six months period beginning March 1, 1920. It will furnish such additional information or reports as may be called for by the Commission.

Petitioner alleges that all of the freight hereinbefore mentioned with which petitioner's cars are loaded is transported by railroad from point of origin to destination and that petitioner is a carrier by railroad within the meaning of Section 209 of the Transportation Act aforesaid.

Wherefore petitioner prays that your honorable body will ascertain and certify to the Secretary of the Treasury of the United States, the amounts necessary to make good the guaranty to your petitioner contained in said Section 209 of the Transportation Act of 1920.

Respectfully submitted.

CHICAGO, NEW YORK & BOSTON
REFRIGERATING COMPANY,
By WILLIAM G. WHEELER,
Its Attorney.

Stenger's No.

Age of the No

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading, at

192— From

[illegible]

The Rate of Freight from.

to _____ is in Cents per 100 Lbs.

[illegible]

(Mail Address - Not for customers of Delivery)

Consigned to

Destination _____ State of _____ County of _____

Route _____ Car Initial _____ Car No. _____

No. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLLUSION
	<p style="text-align: center;">801</p> <p>No. 3222, Special Calendar No. 30. United States, ex relations, Chicago, New York & Boston Re- frigerator Company, a Corporation, Appellant, vs. Interstate Commerce Commission.</p>			

Weight
(Subject to Correction)

Class or
Rate

Check
Collusion

If charges are to be prepaid, write, or stamp here, "To be Prepaid."

Received \$ _____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per _____
(The signature here entitles holder only the amount prepaid.)

Charges Advanced: \$ _____

Page 39.

Shipper

Agenda

(This Bill of Lading is to be signed by the shipper and agent of the carrier loading same.)

For



38 STATE OF ILLINOIS,
Cook County, ss:

Charles R. Cooper, being first duly sworn, says that he is an officer to wit: the President of Chicago, New York and Boston Refrigerator Company, the petitioner herein, and makes this affidavit on its behalf; that he has read the foregoing petition and knows the contents thereof and that the same is true to his own knowledge except as to such matters as are therein stated upon information and belief and as to such matters, he believes it to be true.

C. R. COOPER,
Pres. & Gen'l Mgr.

Subscribed and sworn to before me this 9 day of December, 1921.

[SEAL.]

LETTE M. SORENSEN,
Notary Public, Cook County, Illinois.

My commission expires March 11, 1925.

(Here follow Exhibits A and B, marked pages 39 and 40.)

41 Interstate Commerce Commission,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of report and order of the Commission filed and entered January 9, 1922, in Finance Docket No. 383, in the Matter of the Application of The Chicago, New York & Boston Refrigerator Company for Payment under Section 209 of the Transportation Act, 1920, the original of which is now on file and of record in the office of this Commission.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Commission this 6th day of February, A. D., 1922.

[SEAL.]

GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

Relator's Exhibit Five.

Interstate Commerce Commission.

Finance Docket No. 383.

In the Matter of the Application of THE CHICAGO, NEW YORK & BOSTON REFRIGERATOR COMPANY for Payment under Section 209 of the Transportation Act, 1920.

Submitted December 30, 1921. Decided January 9, 1922.

Following our report issued October 31, 1921, upon the application of the Chicago, New York & Boston Refrigerator Company for a partial payment under the guaranty of section 209 of the transportation act, 1920; Held, That the provisions of the said section do not apply to said company. Application dismissed.

William G. Wheeler for claimant.

Report of the Commission.

By the Commission:

The Chicago, New York & Boston Refrigerator Company is a corporation organized under the laws of the State of Maine. Its capital stock is owned entirely by the Grand Trunk Railway Company. The business in which it is engaged is that of leasing to rail carriers refrigerator cars under terms and conditions whereby it solicits the traffic that moves in its cars, assists in loading and supervises the icing of such cars and in other respect- aids the rail carriers in the handling of the commodities requiring refrigeration service, which are transported in those cars. The claimant prepared and filed returns in the general form required by our orders of October 18, 1920, and January 5, 1921, and on March 15, 1920, it filed a written statement by which it accepted all of the provisions of section 209 of the transportation act, 1920. Its property was under federal control at the termination of the federal control period. Contending that its income for the six months of the guaranty period was less than the amount guaranteed to it by the United States, it

43 is now before us urging that we determine the amount properly due it under the guaranty and certify the same to the Secretary of the Treasurer for payment, pursuant to the provisions of section 209.

We have heretofore considered and disposed of the claimant's application for a partial payment of the claim which it is now pressing for final settlement. In our report of October 31, 1921, in this docket, we set forth quite fully the evidence and the contentions of the claimant with reference to the question of its status under section 209 as a carrier by railroad. After full investigation and consideration we reached the conclusion that the claimant was not

a carrier by railroad within the meaning of that section. We accordingly entered an order dismissing the application for partial payment. No new or additional facts relating to the status of the claimant under section 209 have been presented in the formal application for final settlement now before us. We have discovered no reason for modifying the statement of facts contained in the former report, and a re-statement of those facts in this connection would serve no useful purpose. Further consideration in the light of the present application strengthens our conviction that the conclusion we stated in the former report is sound.

Upon the entire record we, therefore, find that the Chicago, New York & Boston Refrigerator Company was not during any part of the guaranty period a carrier by railroad within the meaning of section 209 of the transportation act, 1920, and that the provisions of said section do not apply to that company. We are without authority to issue a certificate entitling the claimant to a guaranty payment. An order dismissing the application will be entered accordingly.

44

Order.

At a General Session of the Interstate Commerce Commission Held at Its Office, in Washington, D. C., on the 9th Day of January, 1922.

Finance Docket No. 383.

In the Matter of the Application of THE CHICAGO, NEW YORK & BOSTON REFRIGERATOR COMPANY for Payment under Section 209 of the Transportation Act, 1920.

Investigation of the matters and things involved in this proceeding having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the said application be, and the same is hereby, dismissed.

By the Commission:

[L. S.]

GEORGE B. MCGINTY,
Secretary.

45

Answer of the Interstate Commerce Commission.

Filed March 14, 1922.

* * * * *

The Interstate Commerce Commission, respondent in the above-entitled cause, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to

the many errors and insufficiencies in the relator's petition contained, for answer thereunto or unto such parts thereof as this respondent is advised are material for it to make answer unto, answers and says:

I.

Answering Paragraph 1 of the petition, respondent admits that the allegations of fact contained therein are true.

II.

Answering Paragraph 2 of the petition, respondent admits that the allegations of fact contained therein are true except in so far as they are hereinafter denied. Respondent denies that relator is, or has been at any time, a common carrier; denies that relator's properties constitute, or at any time have constituted, a system of transportation; denies that relator is, or at any time has been, engaged in the transportation of property by railroad or otherwise; denies that relator collects, or at any time has collected, prepaid or other
46 freight charges except as agent for the railroad companies over the lines of which its cars move; denies that relator renders, or at any time has rendered, every service in connection with the shipments moving in its cars, or any service whatsoever in connection with said shipments, except those specifically alleged in the petition and not denied herein; denies that relator issues, or at any time has issued, bills of lading except as agent for the railroad companies over the lines of which its cars move; denies that relator holds itself out, or at any time has held itself out, to the public to carry refrigerator or other freight of any kind; denies that relator investigates or settles, or at any time has investigated or settled, loss and damage claims on its own account, and in this connection alleges that in investigating and settling loss and damage claims relator acts, and at all times has acted, as agent for the railroad companies over the lines of which its cars moved, and is, and at all times has been, reimbursed by said railroad companies for all moneys disbursed by it in said settlements of loss and damage claims.

Answering further Paragraph 2 of the petition, respondent denies that during the six months beginning March 1, 1920, hereinafter called the guaranty period, relator solicited shipments for movement in its cars, and alleges that relator did not so solicit shipments; denies that, during said guaranty period, relator investigated or settled loss and damage claims either on its own account or as agent for the railroad companies over the lines of which its cars moved, and alleges that relator did not so investigate or settle loss and damage claims; denies that, during said guaranty period, relator performed any service in connection with the shipments moving in its cars, except the service of issuing bills of lading as to certain of said shipments
47 originating or reconsigned at Chicago, and alleges that during said guaranty period relator did not perform any such service except the service of issuing bills of lading as to certain shipments originating or reconsigned at Chicago; denies that, during said

guaranty period relator received from the Grand Trunk Railway Company, the Delaware, Lackawanna & Western Railway Company, the Lehigh Valley Railway Company, or the Central of Vermont Railway Company, or any one of them, or any other railroad company or companies, over the lines of which its cars moved, any percentage of freight revenue accruing on said shipments and known as "commissions," or any other payment or compensation except certain car mileage allowances based on the number of miles said cars moved over the lines of said railroad companies and known as "car hire," and alleges that relator did not, during said guaranty period, receive from said railroad companies, or any one or more of them, any "commissions" or any other payment or compensation except said "car hire." Respondent alleges that relator did not, during said guaranty period, perform any services to earn "commissions;" that relator, during said guaranty period, was not a party to contracts with any railroad company or companies providing for payment to it of "commissions;" that relator's only business, during said guaranty period, consisted of renting its cars to railroad companies and others, and its only revenue, during said guaranty period, consisted of the "car hire" hereinbefore mentioned, and car rentals; that prior to the time relator's properties were taken under Federal control, and subsequent to the guaranty period the revenue which relator received from "commissions" paid to it by said railroad companies constituted a substantial part of its total revenue, to wit: 50 per cent thereof.

Answering further Paragraph 2 of the petition, respondent alleges

that relator is not incorporated as a common carrier; that the

48 purposes of its incorporation

are to manufacture, build, repair, buy, own or hire, lease, sell or rent for hire cars of all description, both freight and passenger, engine and other rolling stock used and employed in the operation of railroads; to manufacture and deal in any articles fabricated of wood, iron or other metals; to purchase, lease or otherwise acquire, use and sell and otherwise dispose of any and all patents, patent rights, processes and inventions, and interests therein and rights thereunder, as may be deemed essential or convenient in carrying on the business of the corporation, with power to authorize and license other persons or corporations to manufacture, sell, use, enjoy and operate thereunder; to purchase, lease and otherwise acquire, manage, use, deal in and sell and otherwise dispose of any and all real and personal estate and plant and other property and things whatsoever, including stocks, bonds and other securities of similar corporations, deemed necessary or convenient for the prosecution of and in carrying on the business of the corporation, and doing any and all acts and things incidental to or connected with said business; and to have and to exercise all the rights, powers and privileges appertaining to corporations under the general laws of the State of Maine.

Respondent further alleges that relator is not, and never has been, a carrier by railroad, and is, and at all times has been, an equipment

Minnesota
St. Paul, Minn.

owning company; that relator does not own or control, and has not at any time owned or controlled, any motive power, road-bed or track; that relator does not control, and has not at any time controlled, its cars while moving over lines of the railroad companies; that said cars are in the custody and under the control of the railroad companies over the lines of which they are moving, subject only to the requirement that they are not to be diverted from established routes, or loaded eastbound with any local freight of the railroad companies, or loaded at all with freight which would tend to injure said cars; that relator does not file, and has not at any time filed, with respondent, annual or monthly reports, or tariffs naming rates for transportation performed, or to be performed, by it, in interstate or foreign commerce, which said reports and tariffs, common carriers by railroad, engaged in such commerce, are by law required to file; that relator does not receive, and has not at any time received, compensation from the shippers whose shipments move or have moved in its cars; that relator receives, and at all times has received, its only compensation from the railroad companies which transport shipments in its cars; that shippers whose shipments move in relator's cars pay, and at all times have paid, transportation charges to the railroad companies which transport said shipments, and that said transportation charges are, and at all times have been, computed in accordance with rates lawfully established by said railroad companies, and published in tariffs filed by said railroad companies with respondent, which said rates and tariffs are not, and never have been participated in or concurred in by relator.

III.

Answering Paragraph 3 of the petition, respondent admits that the allegations of fact contained therein are true, except that respondent denies that relator's properties taken over by the President constituted at that time, or have ever constituted, a system of transportation. Respondent alleges that the President took possession and control of relator's cars and other property on June 1, 1918.

IV.

Answering Paragraph 4 of the petition, respondent admits that the allegations of fact contained therein are true.

V.

Answering Paragraph 5 of the petition, respondent alleges that each of the allegations contained therein is a conclusion of law, and that, therefore, respondent neither admits nor denies any of said allegations.

50

VI.

Answering Paragraph 6 of the petition, respondent admits that the allegations of fact contained therein are true.

VII.

Answering Paragraph 7 of the petition, respondent denies that relator operated any system of transportation during the guaranty period, and alleges that relator's business during said period was restricted to renting and leasing its cars to railroad companies, and that its revenue during said guaranty period consisted solely of "car hire," as stated hereinbefore in Paragraph II. Respondent neither admits nor denies that relator's net income for said guaranty period was less than one-half the amount named in its contract with the United States as annual compensation for the use of its property during the time said property was under Federal Control, and disclaims sufficient information or knowledge upon which to base a conclusion as to the truth of this allegation. Respondent denies that there is due the relator, under the provisions of section 209 of the Transportation Act, 1920, the sum of \$373,270.76, or any part thereof, or any other sum of money.

VIII.

Answering Paragraph 8 of the petition, respondent admits that relator filed with respondent the returns called for by respondent's orders of October 18, 1920, and January 5, 1921, which said returns purport to set forth certain facts concerning the financial results of relator's business during the guaranty period, but respondent neither admits nor denies that said returns truly and accurately set forth said financial results of relator's business during the guaranty period, and disclaims sufficient information or knowledge upon which to form a conclusion as to the truth and accuracy of said returns.

51

IX.

Answering Paragraph 9 of the petition, respondent admits that the allegations of fact contained therein are true, except that it denies that in making its report and order, dated October 31, 1921, copies of which are attached to the petition and marked "Relator's Exhibit 3," it considered only the facts set out in relator's application dated May 9, 1921, copy of which is attached to the petition and marked "Relator's Exhibit 2," and alleges that there were other facts before it and that in making said report and order it considered all facts and evidence properly before it.

X.

Answering Paragraph 10 of the petition, respondent admits that the allegations of fact contained therein are true, except that respondent denies that in making its report and order, dated January 9, 1922, copy of which is attached to the petition and marked "Relator's Exhibit 5," it considered only the facts stated in relator's petition dated December 29, 1921, copy of which is attached to the

petition herein and marked "Relator's Exhibit 4," and alleges that there were other facts before it and that in making said report and order it considered all facts and evidence properly before it.

XI.

Answering Paragraph 11 of the petition, respondent denies each of the allegations of fact contained therein, and in this connection refers to Paragraphs IX and X, hereof.

XII.

Answering Paragraph 12 of the petition, respondent admits that its refusal to certify to the Secretary of the Treasury of the United States, any amount of money as necessary to make good a guaranty to relator, was based upon its conclusion that relator is not, and never has been, a "carrier by railroad," within the meaning of section 209 of the Transportation Act, 1920, and denies that such conclusion was based only upon facts set forth in the petition. In this connection respondent alleges that said conclusion was based upon facts and evidence properly before it, as hereinbefore alleged, and that it is advised, and therefore alleges, that the matter of importance in this case is not whether the conclusion referred to is based upon facts as alleged in the petition, but is, instead, whether said conclusion is correct.

XIII.

Answering Paragraph 13 of the petition, respondent admits that it refused, and still refuses, to certify to the Secretary of the Treasury of the United States, any amount of money as necessary to make good a guaranty to relator and alleges that relator is not, and never has been, "a carrier by railroad or partly by railroad and partly by water," and is not, and never has been, a "sleeping car company," within the meaning of section 209 of the Transportation Act, 1920, and respondent further alleges that it has, and has had, no duty or authority to certify to the Secretary of the Treasury of the United States, any amount of money as necessary to make good a guaranty to relator.

All of which matters and things respondent is ready to aver, maintain, and prove, as this honorable court shall direct, and hereby prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION,
By J. CARTER FORT,
Counsel for Interstate Commerce Commission.

P. J. FARRELL,
Of Counsel.

53 CITY OF WASHINGTON,
District of Columbia, ss:

Balthasar H. Meyer, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named respondent, and makes this affidavit on behalf of said respondent; that he has read the foregoing answer and knows the contents thereof, and that the same is true.

(Signed)

BALTHASAR H. MEYER.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this 14th day of March, 1922.

[SEAL.]

ALFRED HOLMEAD,
Notary Public.

My commission expires July 10, 1924.

54 *Traverse and Joinder of Issue.*

Filed July 31, 1922.

* * * * *

Comes now the relator by its attorney and traverses the allegations contained in the answer of the respondent, heretofore filed, and joins issue thereon.

WILLIAM G. WHEELER,
Attorney for Relator.

Memorandum.

Filed July 31, 1922.

* * * * *

This is a suit in mandamus instituted by plaintiff against defendant to require the latter to ascertain and certify to the Secretary of the Treasury of the United States the amounts necessary to make good the guaranty to relator, in accordance with the provisions of Section 209 of the act of 1920, (41 Stat. 464,) known as the Transportation Act.

Prior to the filing of the petition herein, the above named relator, (for brevity hereinafter called Refrigerator Company,) filed application with the In-state Commerce Commission for certification, of the character above referred to; and, thereafter, the said Commission refused to make the certification so requested, upon the ground that said Refrigerator Company was not a "carrier" within the meaning of the provisions of said Section 209; as per decision rendered October 31, 1921, copy whereof is appended to the bill as an exhibit.

55 The concluding part of the decision of the Interstate Commerce Commission, under the application above referred to, is thus:

"The claimant's representatives assert that it is a carrier by railroad within the meaning of section 209 because it is engaged in the carriage of freight over or by means of railroads and because it is to all intents and purposes a part of the Grand Trunk Railway, engaged in handling a particular kind of that railroad's traffic; they advance the view that the term "carrier" in section 209 of the transportation act is as broad in its meaning as the same term in section 1 of the Federal control act; and they contend, therefore, that this section is to be so construed as to entitle every carrier which was under Federal control on February 29, 1920, to a guaranty payment. We are unable to agree with the claimant, either in its view of its own status or in its interpretation of the statute. The claimant is an equipment-owning company which, however, does not own or operate motive power, road-bed, or tracks, does not collect from shippers charges for its services, does not control its cars while in trains, and which leases its cars to railroads to be used in handling a particular kind of traffic, depending for its revenues upon car hire and commissions paid by the rail lines. Obviously it lacks many essential characteristics of a carrier by railroad. Recently, in deciding the case of *Wells Fargo & Co. v. Taylor*, 254 U. S. 175, arising under the Federal Employers' Liability Act, the Supreme Court said:

"In our opinion the words 'common carrier by railroad', as used in the act, mean one who operates a railroad as a means of carrying for the public,—that is to say, a railroad company acting as a common carrier. This view not only is in accord with the ordinary acceptance of the words, but is enforced by the mention of cars, engines, track, roadbed and other property pertaining to a going railroad; * * * and by the fact that similar words in the original Interstate Commerce Act had been construed as including carriers operating railroads but not express companies doing business as here shown. 1 I. C. C., 349; *United States v. Morsman*, 42 Fed. Rep. 448; *Southern Indiana Express Co. v. United States Express Co.*, 88 Fed. Rep. 659, 662; s. c. 92 Fed. Rep. 1022. And see *American Express Co. v. United States*, 212 U. S., 522, 531, 534."

"We find that the Chicago, New York & Boston Refrigerator Company is not a carrier by railroad within the meaning of section 209 of the transportation act, 1920, and is not subject to the guaranty provisions of that section. Its application for a partial payment thereunder must, therefore, be dismissed. An order will be entered accordingly."

This case has been tried before the Court under the provisions of Chapter XLII, title "Mandamus" of the Code of this District; and testimony was adduced on behalf of the plaintiff, on July 10th and 11th, 1922; and, thereafter, was orally argued by counsel on behalf of the respective parties and typewritten briefs filed with the Court by said counsel.

Upon due and careful consideration of the pleadings, testimony, both oral and documentary, and of the arguments of counsel, both oral and typewritten, the court is of opinion that the disposition of

the matter by the Interstate Commerce Commission, *supra*, was correct; and, accordingly, that judgment should be given herein for the defendant, with costs against the plaintiff.

Let judgment be entered herein accordingly.

A. A. HOEHLING,
Justice.

July 31, 1922.

57

Supreme Court of the District of Columbia.

Tuesday, August 1st, 1922.

Session resumed pursuant to adjournment, Hon. A. A. Hoehling, Justice, presiding.

* * * * *

Come now the parties hereto by their respective attorneys of record and thereupon this cause heretofore submitted to the Court after a hearing upon the petition and exhibits, the rule to show cause issued, the answer filed, the traverse to said answer and evidence taken in open court, having been considered, it is ordered that judgment be entered for defendant.

Wherefore, it is considered that the rule be discharged, the petition dismissed, that defendant go hence without day, be for nothing held and recover of petitioner its cost of defense to be taxed by the clerk and have execution thereof.

From the foregoing the petitioner by its attorney, in open court, notes an appeal to the Court of Appeals; whereupon, the maximum of an undertaking for costs is hereby fixed in the sum of One Hundred Dollars (\$100.00), with leave to deposit the sum of Fifty Dollars (\$50.00) with the Clerk, in lieu thereof.

Memorandum.

August 18, 1922.—Undertaking on appeal approved and filed.

58

Supreme Court of the District of Columbia.

Wednesday, September 13, 1922.

Session resumed pursuant to adjournment, Mr. Justice Stafford, presiding.

* * * * *

Before Hoehling, J.

Comes now the plaintiff by its Attorney of record and submits to the Court its Bill of Exceptions taken at the trial of this cause, and the same is taken under consideration by the Court; further the Court having this day signed said Bill of Exceptions as of the time of

noting thereof at the trial, now hereby orders the same made of record *nunc pro tunc*.

59

Assignments of Error.

Filed September 16, 1922.

* * * * *

Comes now the petitioner and relator, Chicago, New York and Boston Refrigerator Company, and says that the Supreme Court of the District of Columbia erred in the following particulars, which, upon its appeal to the Court of Appeals, said petitioner and relator assigns as error:

1. The court erred in finding that petitioner and relator is not a carrier by railroad within the meaning of section 209 of the Transportation Act 1920.
2. The court erred in finding and concluding that petitioner and relator is not subject or entitled to the guaranty provisions of section 209 of the Transportation Act of 1920.
3. The court erred in finding that the disposition of the matter by the Interstate Commerce Commission was correct.
4. The court erred in denying the relief prayed for in the petition herein.
5. The court erred in entering judgment for the defendant.

WILLIAM G. WHEELER,

Attorney for the Petitioner and Relator.

60

Designation of Record.

Filed September 16, 1922.

* * * * *

The Clerk of the Court in preparing transcript of record for the Court of Appeals, in the above entitled cause will please include the following:

1. The petition and exhibits attached thereto, omitting the fine print on the back of the bill of lading attached to the petition as an exhibit.
2. Answer of Interstate Commerce Commission.
3. Traverse and joinder of issue.
4. Opinion of Court.
5. Judgment; appeal.
6. Memo.: Judgment; appeal.
7. Order making Bill of Exceptions a part of record.
8. Assignments of Error.
9. This Designation.

WILLIAM G. WHEELER,

Attorney for Petitioner.

Service of a copy of the above designation is admitted September 15, 1922.

J. CARTER FORD,
Attorney for Defendant.

61 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 60, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 66405 at Law, wherein United States ex relatione Chicago, New York & Boston Refrigerator Company, a corporation, is Petitioner and Interstate Commerce Commission is Respondent, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 18th day of September, 1922.

[Seal of Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

EW.

62 In the Supreme Court of the District of Columbia.

At Law.

Number 66405.

UNITED STATES ex Rel. CHICAGO, NEW YORK & BOSTON REFRIGERATOR COMPANY, a Corporation, Petitioner,

vs.

INTERSTATE COMMERCE COMMISSION, Defendant.

Bill of Exceptions.

Be it remembered that on the trial of this cause the following proceedings were had: At the opening of the trial and before the taking of any testimony therein the defendant by it/s counsel, upon leave of Court being granted therefor amended the twelfth paragraph of its answer by striking therefrom the word "common" where it occurs in the last line of the seventh page of said answer.

The petitioner, to maintain the issues on its part joined, offered as a witness CHARLES R. COOPER who testified as follows: I am Presi-

dent and General Manager of the Chicago, New York & Boston Refrigerator Company, and have been since 1914. The Company commenced business in the year 1893. I have been associated with it from that time down to the present, and am familiar with its operation. I became General Manager in 1902. From 1893 to 1897 the company furnished cars for transporting dairy products. In 1897 the methods of doing business were somewhat changed as will later appear. Headquarters were established in Chicago, and agencies in St. Paul, Kansas City, Omaha, Sioux City, Mason City, Cedar Rapids, Milwaukee, and later in Detroit. We also established agencies in New York, Boston and Philadelphia. It was the duty of the Western representatives of the Company to call upon shippers, look after freight shipped, distribute cars, and notify train dispatchers where cars were needed. We had a contract with the Grand Trunk Railway Company and the Central Vermont Railway Company, dated September 16, 1897. The paper shown me is that contract.

This paper was offered in evidence as "Plaintiff's Exhibit 1" and is as follows:

63

PLAINTIFF'S EXHIBIT 1.

This agreement, made this sixteenth day of September 1897 between the Chicago, New York and Boston Ref. Company, a corporation organized under the laws of the State of Maine, party of the first part and the Grand Trunk Railway System (comprising the Grand Trunk Railway Company of Canada, the Chicago and Grand Trunk Railway, the Detroit, Grand Haven & Milwaukee Railway Company), the Central Vermont Railroad, the Concord & Montreal Railroad Company, and the Boston and Maine Railroad, parties of the second part,

Witnesseth:

Whereas, for some years past the parties hereto have had contracts with each other, relating to the transportation of refrigerator business, and they now mutually desire to cancel the one now in existence, and

Whereas, they also desire, for the public and their own convenience and advantage, to establish under a new contract, a refrigerator line over the roads of the parties of the second part, and their connections, for the accommodation of refrigerator traffic between Western and Eastern points and districts reached via the roads of the parties of the second part, and their connections, including the traffic secured by the party of the first part and offered for transportation via the Niagara frontier and various junction points over other roads than those mentioned her-in, having proper connections and working arrangements with one or more of the parties of the second part, and

Whereas, the party of the first part owns a large number of refrigerator cars, and now and for many years past has controlled a large amount of refrigerator traffic,

Now, therefore, the parties hereto mutually agree as follows:

First. The parties of the second part agree to give the cars and business of the party of the first part, as favorable through rates, time

and working facilities of every kind, as are given to the cars and business of any other refrigerator line operating over their railroads, and to place the said party of the first part upon as favorable footing in every respect, for all its traffic, as the most favored refrigerator line operating via other routes or railways between the same or similar points or districts.

64 Second. For the purposes of this agreement, the term "Refrigerator Traffic" shall include ale, beer, porter, bacon, beef, bovine, apples, butter, condensed milk, cheese, poultry, dressed meat, eggs, green fruits of all kinds, game, lard, vegetables of all kinds, vinegar, wine, and all analogous articles, requiring refrigerator cars for protection from damage by either heat or cold while in transit.

Third. It is further expressly agreed that said cars are not to be loaded for local business or in any way diverted without the consent of the party of the first part. And it is further agreed that all cars constructed with end tanks are not to be loaded by the parties of the second part with any other than dairy freight (and the term "Dairy Freight" shall only include butter or its substitutes, eggs, cheese, dressed poultry and game) without the consent of the party of the first part.

Fourth. Whenever the Official Classification requires the carrier to ice at its own expense, the parties of the second part shall furnish all the ice necessary for said cars while on their lines, including all necessary labor connected therewith, at a price not to exceed that charged to other parties using the line of the parties of the second part, and the party of the first part shall reimburse the parties of the second part on or before the twentieth (20th) day of each month, for the ice furnished the preceding month. The Agents of the Railroads at icing stations shall furnish full reports daily to the party of the first part, of all ice used in each car at icing stations, together with any other information desired on the subject, on the same day trains pass his station, and the Agents of the party of the first part shall have the right to inspect and investigate, by any means it may wish to employ, as to the amount of ice used.

It is also further agreed that any ice remaining in the cars at their destination, and which has been charged to the line, shall be the property of the party of the first part, and the terminal road, party of this contract, shall compensate the party of the first part for it, or aid in disposing of it to the best possible advantage.

Fifth. Should the party of the first part, however, desire at any time to do its own icing, it shall have the right to erect free of charge ice houses, or cold storage warehouses on the premises of the parties of the second part at terminal or junction stations or other points where it may be necessary, and the parties of the second part agree to lay and maintain convenient sidings for the various buildings that may be erected.

At the termination of this contract, said parties of the second part agree to pay or allow the party of the first part the then appraised value of any building or buildings so erected.

The parties of the second part further agree that they will transport for the party of the first part, ice, salt and the other materials on its

various lines, which the party of the first part may require in connection with the business, at a rate not to exceed one half cent ($\frac{1}{2}\text{¢}$) a ton per mile.

Sixth. The parties of the second part agree to pay the party of the first part three quarters of one cent ($\frac{3}{4}\text{¢}$) per mile, for each and every mile run by the cars owned or controlled by the party of the first part, whether loaded or empty.

The parties of the second part further agree to pay the party of the first part for all traffic transported over the lines of the parties of the second part, in the cars owned or controlled by the party of the first part, and also on all traffic reaching the lines of the parties of the second part, for transportation to the Atlantic Seaboard or points short thereof, consigned in care of the line or lines of the party of the first part, or transported in cars now owned but controlled by it provided only that the traffic shall have been duly transported over the lines of all or some of the parties of the second part, in accordance with the terms and spirit of this agreement, a commission of twelve and one half ($12\frac{1}{2}$) per cent of the gross earnings after deducting bridge tolls, etc., as quoted below, or as shown by the original way bills received by said second parties for the transportation of said freight over the lines of railroad falling within the first, second and third classes, and ten (10) per cent on all classes paying less than third-class rates, according to official classification in force from time to time after deduction of bridge tolls, or other arbitraries, when any such are incurred by said second parties, and to the extent that same are provided for in the published joint tariffs.

Seventh. The cars shall be under the control of the
66 respective companies upon their several roads, but the directions of the party of the first part as to their distribution shall be strictly and promptly observed.

Eighth. The parties of the second part, and each of them agree to furnish free transportation to all of the officers, agents, and employees of the party of the first part, while engaged in its business; also to make applications for passes for agents and employees of the party of the first part, to such railroads as are in any way connected with the lines, of the parties of the second part and over any such road as is deemed advisable to solicit business on, but it is especially understood and agreed that the party of the first part shall indemnify and hold harmless the parties of the second part against all claims, suits or actions, of whatever kind, connected with any loss, or injuries which may be sustained by any officer or agent of the party of the first part, while on the line of the parties of the second part, whether such loss or injury is caused by the negligence of the employees of the parties of the second part or otherwise, or whether such claims or actions shall be instituted by such officers or agents, or their legal representatives or otherwise.

And the parties of the second part further agree to transmit free for the party of the first part, all telegraph messages in connection with the business covered by this agreement so far as the telegraph lines controlled and operated by the parties of the second part are concerned, except so far as would conflict with contracts now in

existence between the parties of the second part, the Great North-Western, Western Union, or any other telegraph companies.

Ninth. It is further agreed, that at the termination of this contract, the parties of the second part will deliver promptly to the western terminus, free of charge, all cars of the party of the first part, that have been run over the lines of the said parties of the second part, and hand the same to such road or roads as may be designated by the party of the first part.

Tenth. The rules of the Master Car Builders Association shall govern all questions affecting condition, loss, damage and repairs to cars.

Eleventh. No switching or terminal charges shall be made
67 against the party of the first part by the parties of the second part, or any of the cars covered by this agreement, and such services shall be performed by the parties of the second part without compensation as long as said second party participates in its proportion of the freight revenue.

Twelfth. In the event of the party of the first part not procuring sufficient refrigerator traffic, the parties of the second part shall have the right to load the cars with any class of freight that will not damage them for dairy products, provided such traffic is destined to points on or beyond the direct lines west, but the commission herein specified shall not apply to such loading.

The intention of this agreement is that the party of the first part is to receive the commission hereinbefore provided for, on west as well as east-bound business transported in the cars owned or operated by, and when such traffic is secured by said first party.

Thirteenth. The parties of the second part agree that all refrigerator cars owned or operated by said party of the first part shall be promptly unloaded at destination, and returned, loaded or empty, by the proper route to Chicago, or other junction points, as may be directed by the party of the first part, and such cars shall not be used for local traffic without the consent of the party of the first part nor shall they be used for any other service than the through refrigerator car traffic to be carried by this agreement, without the consent of the party of the first part. The condition of the cars used is to be determined by the usual inspection under the rules of the M. C. B. A.

The parties of the second part each agree to be individually responsible as common carriers and pay for all damage to or loss of freight while upon their respective roads, and if damage or loss shall occur which cannot be located, they each agree to pay their proportion based upon the rules of the freight claims association.

Fourteenth. All mileage and commission accruing to the party of the first part by the parties of the second part under this agreement shall be paid, to the said first party as follows: viz, mileage and commissions monthly, and as soon after the first of each month as the accounts can be made up allowing a reasonable time for checking,
and not later than the twentieth (20th) day of the month,
68 succeeding that in which the mileage was earned and the business was done, and the party of the first part also agrees

to make monthly settlements with the parties of the second part for all amounts which may be due and owing by it to the parties of the second part or either of them for repairs, etc., it being further agreed that the parties hereto shall have access to the proper books of the other party for the purpose of determining and verifying the amounts that may be due from one party to the other.

Fifteenth. This agreement is in substitution and annulment of the contract made between the parties hereto on the 26th day of January 1895 and shall remain in force between the parties hereto for the term of ten years from the day and date first herein written, and thereafter from year to year until twelve months' previous notice is given in writing by the party desiring to terminate the same. And it is further distinctly understood that this contract includes not only the present lines embraced in the several systems, but also any line or lines that may hereafter be severally acquired, or controlled by the said parties of the second part.

Sixteenth. And the parties of the second part further agree to show the names, and/or trade mark of the refrigerator line or lines under which the business of the party of the first part is solicited and handled, in all its traffic or printed matter in which they show the name of any of the fast freight lines operating over their roads, and that they will further agree to make the same effort to extend and maintain through traffic arrangements with the western connections for the handling of through business in connection with the refrigerator line or lines operated by the party of the first part as they do for any other fast freight line.

The party of the first part agrees to maintain a system of line accounts similar to that of other so-called commission lines and voucher and settle all claims on traffic billed in the line that have been authorized by and for the account of the parties of the second part or in accordance with their instructions.

The business carried under this agreement is to be done under the name and trade mark of the "National Despatch Refrigerator Line" and "New York Despatch Refrigerator Line" it being understood
69 that the National Despatch Refrigerator traffic is to be routed via the main line of the Grand Trunk System and St. Johns, and the New York Despatch Refrigerator traffic via the western division of the Grand Trunk and the Niagara Frontier, but the equipment enrolled by the party of the first part may be run in either of these routes, irrespective of the lettering on the cars.

Seventeenth. In case any question shall arise between the parties hereto, as to the interpretation or meaning of any of the clauses or provisions of this contract, and the parties hereto are unable to agree between themselves, the question shall be submitted to arbitrators, one of whom shall be chosen by the party of the first part, and one by the parties of the second part and if either party has not, within thirty days, after notice of arbitration has been given, named their arbitrator, then the party first giving notice shall choose two arbitrators, and the two so chosen, in case they disagree, shall choose a third arbitrator, and the decision in writing by any two of such arbitrators shall be final and binding upon all parties thereto, in respect to the

matter covered by such decision, the parties hereto agreeing to abide by such decision.

In witness whereof, the parties hereto have executed this contract the day and year first above written.

CHICAGO, NEW YORK AND BOSTON
REF. CO.
G. W. SIMPSON,
President.
GRAND TRUNK RY. SYSTEM.

(Signed)

Recommended.

(Signed) GEO. B. REEVE,
Gen. Traffic Mgr.

" CHAS. M. HAYS,
Gen. Mgr.
CENTRAL VERMONT RY.

(Signed) CHAS. M. HAYS,
Receiver.

70 The Boston and Maine Railroad Company did not sign that contract but it and the other companies operated under it. On August 26, 1907, another contract was made of which the paper shown me is a copy. This paper was offered in evidence—"Plaintiff's Exhibit 2" and is as follows:

71 PLT. EX. 2.

Strictly confidential.

This agreement, made this twenty-sixth day of August, 1907, between:

The Grand Trunk Railway System, comprising the Grand Trunk Railway Company of Canada, the Grand Trunk Western Railway Company, The Detroit, Grand Haven and Milwaukee Railway Company, the Toledo, Saginaw and Muskegon Railway Company, the Cincinnati, Saginaw and Mackinaw Railroad Company, and the Central Vermont Railway Company, hereinafter called "The Railways," Parties of the first part;

and

The Chicago, New York and Boston Refrigerator Company, a corporation organized under the laws of the State of Maine, hereinafter called "the Car Company," Party of the second part;

Witnesseth:

Whereas the parties hereto desire for public and their own convenience and advantage to enter into an agreement for the operation of a refrigerator line over "the Railways" and their connections for the handling of refrigerator traffic, as defined in clause Second, between Western United States and Eastern United States points over the main lines of the Grand Trunk and Central Vermont Railways;

also to United States points east of Norton Mills, Vt., including export refrigerator traffic via Portland, Me., to European destinations; also via Niagara Frontier for Buffalo, N. Y., New York City, etc.;

And whereas "the Car Company" is the owner of a number of refrigerator cars suitable for the handling of refrigerator traffic;

Now, therefore, the parties hereto mutually agree as follows:

First. "The Railways" agree to give to this refrigerator traffic as favorable through rates, time and facilities of every kind as are given to like traffic of any other Refrigerator Car Company operating over the lines of "the Railways" and will, by all proper means, co-operate with "the Car Company" for the purpose of giving the public as satisfactory service in all respects as is given by any competing refrigerator line, in consideration of which and the other benefits to accrue to them under this contract, "the Car Company" agrees that all traffic solicited by or carried in any cars owned, controlled or operated by "the Car Company" shall be routed over the lines of "the Railways."

Second. For the purpose of this agreement the term "Refrigerator traffic" shall include only Butter, Condensed Milk, Cheese, Dressed Poultry, Eggs and Game.

Third. It is agreed that the said cars are not in the West to be loaded Eastbound with local traffic of "the Railways" nor in any way diverted from the established through routes without the consent of "the Car Company," nor are they to be loaded with any freight that will tend to injure or cause them to be rendered unfit for the carriage of refrigerator traffic.

Fourth. "The Railways" agree that all loaded refrigerator cars operated in this service by "the Car Company" shall, at destination points on their lines, be promptly unloaded and forwarded either loaded or empty to such points as may be directed by "the Car Company" for the purpose of securing refrigerator traffic for carriage under this agreement.

In the event, however, of "the Car Company" not procuring sufficient Westbound refrigerator traffic "the Railways" shall have the right to load the said cars with any class of traffic that will not damage them for the carriage of Dairy Products, provided such traffic is destined to points on or beyond the direct lines west, but east of the Missouri River.

72 Fifth. The cars shall be under the control of "the Railways" while on their respective lines, but the directions of "the Car Company" as to their distribution at, and west of Chicago, shall be promptly observed. The rules of the Master Car Builders' Association shall govern all questions affecting condition, loss, damage and repairs to cars.

Sixth. It is agreed that at the termination of this contract "the Railways" will deliver promptly to their Western Terminus free of charge, all cars of "the Car Company," that have been run over the lines of "the Railways," and hand same to such road or roads immediately connecting as may be designated by "the Car Company."

Seventh. And "the Railways" further agree to show the names, and, or Trade Mark, of the refrigerator line or lines under which the business of "the Car Company" is solicited and handled, in all their tariffs or printed matter in which they show the name of any of the Fast Freight Lines operating over their roads, and that they will further agree to make the same effort to extend and maintain through traffic arrangements with the Western connections for the handling of through business in connection with the refrigerator line or lines operated by "the Car Company" as they do for any other Fast Freight Line.

The business carried under this agreement is to be done under the name and Trade Mark of the "National Despatch Refrigerator Line" and "New York Despatch Refrigerator Line," it being understood that the National Despatch Refrigerator traffic is to be routed on the main line of the Grand Trunk System and Central Vermont Railway Company, and the New York Despatch Refrigerator traffic on the Western Division of the Grand Trunk and the Niagara Frontier, but the equipment controlled by "the Car Company" may run in either of these routes, irrespective of the lettering on the cars.

Eighth. "The Car Company" agrees not to substitute any other connecting line east of the Niagara Frontier for the present connecting line, viz., West Shore Railroad, without the consent in writing of "the Railway" is first obtained, the intention being that "the Car Company" desires to make any change in the connecting line east of the Niagara Frontier, "the Railways" shall be consulted beforehand, so that the matter may be arranged to the mutual satisfaction of "the Car Company" and "the Railways" respectively.

Ninth. In order to meet as far as practicable the time schedule of competing lines "the Railways" agree (other conditions being equal) to accept their *pro rata* proportion, based on mileage, of the time schedule from Chicago district to Seaboard points, with the usual allowance for Customs Inspection.

Tenth. Whenever under the classification currently in use by the Railways they deem it desirable to ice refrigerator traffic "the Railways" shall provide all the ice necessary for said cars while on their lines, including all necessary labor connected therewith, at a cost not to exceed that charged to other parties in the same line of business known as "Dairy Lines" subject to a maximum charge of two dollars fifty cents per ton of two thousand pounds, and "the Car Company" shall within twenty days after receipt of the icing account reimburse "the Railways" and subsequently debit to the preferred railway carriers on a revenue basis, the cost of same, less one per cent on first, second and third-class traffic, and seven and one-half per cent on lower class traffic if any, the said 10 and 7½ per cent respectively to be assumed by "the Car Company." The Agents of "the Railways" at icing stations shall furnish as far as practicable full report daily to "the Car Company" of all ice put on each car at icing stations, together with any other information required in connection therewith, and the Agents of "the Car Com-

pany" shall have the right to inspect and investigate by any means they may wish to employ as to the amount of ice so used.

Tenth-A. "The Railways" agree to assume their percentage proportion on revenue basis of icing expense up to but not exceeding two dollars fifty cents (\$2.50) per ton, less ten per cent (10%) to be paid by "the Car Company" on the said refrigerator traffic originating or loaded in the City of Chicago, not already provided for in clause ten, and also of the re-icing expense at so-called Chicago Junctions, such as Kankakee, Blue Island, etc., on traffic from points west of Chicago, but not exceeding two dollars fifty cents (\$2.50) per ton.

Tenth-B. "The Car Company" shall efficiently perform the necessary icing service at the initial or junction points beyond the lines of "the Railways," or assume the cost thereof, other than provided in clause 10-A.

73 Eleventh. On "the Car Company's" refrigerator cars requiring to be placed in the Grand Trunk Eldson Yard for cleaning, testing or repairs, no charge is to be made by "the Railways" for such switching service, but upon such of "the Car Company's" cars as they may order from the Grand Trunk Elsdon Yard to their own tracks in their works at Elsdon for the purpose of testing, cleaning or repairs, "the Car Company" to pay to "the Railways" a charge of fifty cents (50c.) per car for the round trip.

Twelfth. "The Railways" agree to pay to "the Car Company" for hire of refrigerator cars the current rate paid generally by the other Railway Companies operating from Chicago Eastbound to New England and Trunk Line territory, to similar Refrigerator Car Companies (other than to shippers owning their own cars) whether the same be on a mileage or per diem basis, except that under no circumstances shall the compensation exceed three-quarters of a cent per mile run or equivalent thereof.

Thirteenth. Subject to the conditions contained in clause 20, "the Railways" further agree to pay to "the Car Company" for all refrigerator traffic defined in clause two transported over the lines of "the Railways" in cars owned, controlled or operated by "the Car Company," also on said refrigerator traffic which may be consigned in care of "the Car Company," although loaded in other refrigerator cars, a commission arrived at as follows:

There shall first be deducted from "the Railways" revenue the amount paid by them for switching, arbitraries, lighterage, bridge tolls, terminals or other charges, whether the same are deducted before pro rating with the respective railways interested in the transportation of the refrigerator traffic, or subsequently paid by adjustment voucher, and "the Car Company" will then be allowed:

Upon traffic classified according to the authorized classification currently in use as first, second or third-class, ten per cent (10%) of the balance;

Upon traffic lower than third-class, if any, seven and one-half per cent (7½%) of the balance.

Fourteenth. All car hire and commissions due "the Car Company" from "the Railways" shall be paid as follows, viz., car hire and

commissions monthly and as soon after the first of each month as the accounts can be made up and rendered, allowing a reasonable period for checking; and "the Car Company" shall also as soon after the first of each month as practicable, make monthly settlements with "the Railways" of all accounts which may be due and owing by it to "the Railways."

Fifteenth. "The Railways" to provide free transportation for the Officers, Agents and employees of "the Car Company" while traveling over their lines on the business of "the Car Company," carried under this agreement, and also to make application to such other Railways as it is deemed advisable to solicit business on.

Sixteenth. Except so far as may conflict with any contract between "the Railways" and any Telegraph Company "the Railways" agree to transmit free for "the Car Company," over telegraph lines controlled and operated by "the Railways" all telegraph messages in connection with the business covered by this agreement.

Seventeenth. In consideration of "the Railways" entering into this agreement "the Car Company" covenants and agrees to at all times efficiently maintain at its own expense all necessary and proper agencies, staff and offices, and to use its best endeavor to obtain by solicitation, for transportation over the lines of "the Railways" all refrigerator traffic possible.

Eighteenth. "The Car Company" agrees to maintain a system of accounts similar to that of other Commission Lines, and to voucher and settle all claims in respect of traffic carried under this agreement which have been authorized by "the Railways." "The Car Company" shall also render a monthly statement of such accounts, showing the proportions, if any, due from "the Railways" which shall be paid to "the Car Company" as soon thereafter as is consistent with the proper auditing thereof.

Nineteenth. "The Railways" each agree to be individually responsible as common carriers and pay for all damage to or loss of freight while upon their respective roads, and if damage or loss shall occur which cannot be located, they each agree to pay their proportion based upon the rules of the Freight Claim Association.

Twentieth. It is further agreed that the provisions of this agreement shall be subject to revision at any time should they be found to conflict with the provisions of the Interstate Commerce Act or the Canadian Railway Act, or to any regulation of the Interstate Commerce Commission, or of the Board of Railway Commissioners for Canada, now or hereafter enacted and in force.

Twenty-first. In case any question shall arise between the parties hereto as to the interpretation or meaning of any of the provisions of this agreement, and the parties hereto are unable to agree between themselves, the question shall be submitted to Arbitrators, one of whom shall be chosen by "the Railways" and one by "the Car Company," and if either party has not within thirty days after notice of arbitration has been given named its Arbitrator, then the party first giving notice shall choose two Arbitrators, and the two so chosen shall choose a third Arbitrator, and the decision in writing by any

two such Arbitrators shall be final and binding upon all parties hereto in respect to the matter covered by such decision.

Twenty-second. This agreement shall remain in force and effect for one year from the 17th day of September, 1907, and thereafter from year to year until the party desiring to terminate has given to the other six months' written notice of such desire.

In witness whereof, the parties hereto have executed this contract the day and year first above written.

THE GRAND TRUNK RAILWAY
SYSTEM.

CHAS. M. HAYS,

Second Vice-President and General Manager.

A. T. MORTON.

THE CENTRAL VERMONT RAIL-
WAY COMPANY.

CHAS. M. HAYS,

President.

A. T. MORTON.

CHICAGO, NEW YORK & BOSTON
REFRIGERATOR COMPANY.

WALTER W. WHIPPLE,

President.

Recommended:

JNO. W. LOUD,

Freight Traffic Manager.

75 On March 3, 1908, the Boston and Maine Railroad Company wrote a letter to petitioner accepting the provisions of the contract of August 26, 1907. This letter was identified by the witness, offered in evidence as part of "Plaintiff's Exhibit 3" and is as follows:

76

PLT. EX. 3.

(Copy.)

Boston and Maine Railroad,

Traffic Department,

Boston, Mass., March 3rd, 1908.

Mr. W. W. Whipple,

President Chicago, N. Y. & B. Refrigerator Line,

618 Commercial National Bank Building, Chicago, Ill.

DEAR SIR:

Replying to your valued favor of January 25th, regarding new contract with your company, signed by Chas. M. Hayes, Second Vice President and General Manager, Grand Trunk Ry., and President of the Central Vermont Ry., also by you as President of Chicago, New York & Boston Refrigerater Line.

I note the new contract provides for a commission to be paid to your company of 10 per cent, and the cost of icing is to be prorated on basis of earnings from Chicago and from Chicago District points to eastern destinations, while your former contract called for commission of 12½ per cent and your company to assume the entire cost of icing.

The Boston & Maine R. R. prefer not to sign the new contract, but until you are otherwise advised we are prepared to join the Grand Trunk and Central Vermont in carrying out the terms of the new contract with the understanding that the Boston & Maine R. R. join in paying the commission and join in paying for the icing only in connection with business to competitive points.

Yours truly,

(Signed)

W. F. BERRY,

Second Vice President & General Traffic Manager.

77 On April 1, 1913 a new contract was made by petitioner and the Grand Trunk System and its subsidiaries. A copy of this contract was offered as in evidence as "Plaintiff's Exhibit 4." The original Contract which was produced, had attached thereto a copy of the agreement of August 26, 1907. The copy offered in evidence did not have this attachment but in other respects was the same as the original. It is as follows:

78

PLT. EX. 4.

This agreement, made in duplicate this 1st day of April, A. D. 1913.

Between:

The Grand Trunk Railway system, comprising the Grand Trunk Railway Company of Canada, the Grand Trunk Western Railway Company, the Detroit, Grand Haven and Milwaukee Railway Company, the Toledo, Saginaw and Muskegon Railway Company, the Cincinnati, Saginaw and Mackinaw Railroad Company, and the Central Vermont Railway Company, hereinafter called "the Railways," Parties of the first part:

and

The Chicago, New York and Boston Refrigerator Company, a Corporation organized under the laws of the State of Maine, hereinafter called "the Car Company," party of the second part:

Whereas, an Agreement was entered into on the 23th day of August, 1907, between the parties hereto providing for the operation of a refrigerator line over the railway and connections of the parties of the first part, a printed copy of which Agreement is hereto attached, and marked "A" and signed for identification by the parties hereto, and which Agreement is still in full force and effect;

And whereas, the parties hereto have agreed to vary said Agreement in the following *prospects*:

Now, therefore, this agreement witnesseth, that in consideration of the premises the parties hereto covenant, promise and agree each with the other as follows:

1. Clause Ten of said Agreement is hereby varied by substituting the words "twelve and one-half" for the word "ten" in line 12, and the figures "12½" for the figures "10" in line 14, of Clause Ten of said printed copy of Agreement.

2. Clause Ten A of said Agreement is hereby varied by substituting (1) the words and figures "three dollars and fifty cents (\$3.50)" for the words and figures "two dollars and fifty cents (\$2.50)" in line 3, (2) the words "twelve and one-half" and the figures "(12½%)" for the word "ten" and the figures "(10%)" in line 4 of said Clause Ten A of said printed copy of Agreement.

3. Clause Thirteen of said Agreement is hereby varied by substituting the words "twelve and one-half" for the word "ten" and the figures "(12½%)" for the figures "(10%)" in line 18 of said Clause Thirteen of said printed copy of Agreement.

4. This Agreement shall become effective on and from the 1st day of April, 1913, and all the terms and conditions of said Agreement of 26th August, 1907, as specifically varied and amended by this Supplementary Agreement are hereby ratified and confirmed, and shall continue in full force and effects as provided for in Clause Twenty-two of said Agreement.

In witness whereof, the parties hereto have hereunto affixed their respective corporate seals on the day and year first above written.

THE GRAND TRUNK RAILWAY
SYSTEM.

E. J. CHAMBERLAIN,

President.

THE CENTRAL VERMONT RAIL-
WAY COMPANY.

E. J. CHAMBERLAIN,

President.

CHICAGO, NEW YORK & BOSTON
REFRIGERATOR COMPANY.

WALTER W. WHIPPLE,

President.

Signed, sealed and delivered in the presence of

D. E. GALLOWAY,

D. E. GALLOWAY,

A. E. ROSEVEAR.

Recommended:

J. E. DALRYMPHE,

Vice-President.

79 During all of this period the petitioner had a contract with the New York Central as lessee of the West Shore Railroad. The petitioner succeeded to the rights of the Chicago Boston and Liverpool Company named in that contract. There is a letter to

that effect attached to the contract and dated February 13, 1894. We operated under that contract up to July 12, 1913, at which time the contract was terminated as appears from a letter attached thereto. This contract was identified by the witness and offered in evidence as "Plaintiff's Exhibit 5" and is as follows:

80

PLT. EX. 5.

(Copy.)

New York Central Lines,
Freight Traffic Dept.

File No. 6822.

New York, July 12, 1913.

Mr. W. W. Whipple,
President Chicago, New York & Boston Ref. Co.,
Commercial National Bank Bldg., Chicago, Ill.
Mr. C. R. Cooper,
General Mgr. Chicago, New York & Boston Reg. Co.,
Commercial National Bank Bldg., Chicago, Ill.

DEAR SIRs:

Referring to our recent conference in this office.

I beg to advise that it is the desire of this Company to terminate the agreement of March 1, 1893, and I hereby exercise, in behalf of this Company the option provided for in Section Twelfth of said agreement by giving you this notice.

Will you kindly acknowledge receipt of this letter.

Yours truly,

(Signed)

F. LA BAU,
Freight Traffic Manager.

F. L. B./F.-8.

81

(Copy.)

New York Central Lines,
Freight Traffic Department.

Personal.

Chicago, Dec. 3rd, 1909.

Mr. F. La Bau,
Freight Traffic Manager.

DEAR SIR:

In an interview to-day with Messrs. W. W. Whipple and C. R. Cooper, President and General Manager respectively of the New York Despatch Refrigerator Line, I have arranged with them to place the Line on a salary basis beginning with January 1st, 1910, their monthly voucher for the coming year to be \$2,060.85, based

on our payments to them for the twelve months ending October 31st, 1909, as shown by attached statements, it being understood by them that if for the twelve months as from January 1st, 1910, they should show increased earnings their salary allowance will be increased in the same ratio, or, in the reverse direction, if they show a decrease in their revenue, that there should be a corresponding decrease in their monthly allowance. It was further understood that a demonstration would be made by them of their revenue at the end of December 31st, 1910, or if their accounts cannot be brought up to December 31st that the earnings for the twelve months' period from November 1st, 1909 to October 31st, 1910, shall be taken as a basis from which to compute their allowance for the succeeding twelve months from January 1st, 1911.

The management of the New York Despatch Refrigerator Line thoroughly understand that there is to be no change in our policy toward them and that the new method of compensation is with a view of suiting our own ends, without any thought of a change in policy or conditions.

The allowance to the New York Despatch Line contemplates on their part the adjustment by them of any expenses of any character whatsoever they may incur.

Will you please arrange to have voucher prepared monthly and forwarded to our Treasury Department for remittance to Mr. Cooper.

Yours truly,

General Freight Traffic Mgr.

Copy to Mr. Cooper.

82

Boston, February 13, 1894.

Whereas the Chicago, Boston & Liverpool Company and the New York Dispatch Refrigerator Company within named were on June 13, 1893 consolidated under the name of the Chicago, New York & Boston Refrigerator Company, and it is now mutually agreed that the within contract between the New York Central and Hudson River Railroad Company and the Chicago, Boston & Liverpool Company shall continue and remain in full force and effect according to the terms thereof between the New York Central & Hudson River Railroad Company, and the Chicago, New York & Boston Refrigerator Company, as the successor of the Chicago, Boston & Liverpool Company.

In witness whereof the parties hereto have caused this instrument to be executed the day and year above written.

(Signed)

CHICAGO, NEW YORK & BOSTON
REFRIGERATOR CO.,

[SEAL.]

By G. W. SIMPSON,

President.

83

This agreement, made and entered into this first day of March, 1893, by and between the New York Central and Hudson River Railroad Company, as lessee of the West Shore Rail-

road, hereinafter called the "Railway Company"; and the Chicago, Boston and Liverpool Company, for itself and as lessee of the New York Despatch Refrigerator Company, hereinafter called the "Car Company";

Witnesseth:

Whereas the Car Company is the owner of a large number of refrigerator cars and has traffic arrangements with various railways for the transportation of its cars and business between Western points and the City of Buffalo or Suspension Bridge in the State of New York, and now desires, for the better and more expeditious conduct, and the extension and development of its traffic in perishable freight, to enter into an agreement with the Railway Company for the handling of its said traffic from said Buffalo or Suspension Bridge to various points on or near the Atlantic seaboard reached by the line of the Railway Company and its connections; and,

Whereas, the Railway Company for the benefit and convenience of the public as well as for its own convenience, is willing to enter into such an arrangement;

Now therefore, the parties hereto, in consideration of the premises, mutually agree as follows:

84 First. The Railway Company agrees, in connection with such roads West of Suspension Bridge or Buffalo as the Car Company now has or may hereafter have contracts with for the handling of its cars and the business, to form a through refrigerator car line to New York, for the efficient transportation of perishable freight from Western points on or near the Atlantic seaboard reached by it or its connections, and to give to said refrigerator car line as favorable through rates and working facilities of every kind as are given by it to any refrigerator car line which is now or may hereafter be operated during the life of this contract over its railroad.

Second. The Railway Company agrees to pay the Car Company the current rate (now three-quarters of one cent) of mileage prevailing during the continuance of this agreement for each and every mile run by each of said cars over its railroad, whether loaded or empty, reports and settlements to be made monthly in the usual way.

85 Third. The Railway Company also agrees to pay to the Car Company a commission equal to ten per cent of the actual revenue derived from the transportation over its road in the cars of the Car Company of the perishable or regular refrigerator car freight covered by this agreement, not including dressed beef or provisions, and the Railway Company also agrees that the Car Company's equipment is not to be used by authority from the Railway Company for lower class East-bound traffic, without the consent of the Car Company, and if so used, by the authority of the Railway Company, and provided the traffic pays tariff rates, the Car Company is to be allowed a commission of five per cent of the revenue derived from the transportation of such freight.

Fourth. The Railway Company agrees to relieve the Car Company of the expense of icing the said cars when required by the Car Com-

pany, while on its road, containing property which is iced by the carrier under the rules of the classification, and bear and pay its proper proportion of the line charges for cleaning the cars.

Fifth. In arranging time schedules, the Railway Company agrees to accept its proportion of the agreed schedule time from Chicago to New York based on its mileage, to meet, so far as practicable, that of other lines.

Sixth. The Railway Company agrees that the present mileage rate of three quarters of a cent per mile shall not be changed during the continuance of this contract except such change is required by the joint action of the Trunk Line Association.

Seventh. The Car Company in consideration of the payment of the commission aforesaid, agrees at its own expense, to establish and maintain the necessary officers and pay the necessary soliciting agents and to use its best endeavors to procure all the business possible for transportation over the Railway Company's line.

Eighth. The Car Company shall from time to time furnish such cars as the business of the line may require.

86 Ninth. The Car Company agrees that the Railway Company may use its cars on their return trips for general traffic purposes, but this right is to be exercised so as not to unreasonably delay the cars, nor shall they be loaded with freight which will injure them for ordinary refrigerator business. Provided, however, that said cars shall only be loaded by the Railway Company for points on the lines of railroad forming the said through refrigerator car line, unless otherwise mutually agreed.

Tenth. The Rules of the Master Car Builders shall govern all questions affecting condition, loss, damage and repairs to cars.

Eleventh. The Railway Company agrees to be responsible as a common carrier and to pay for all damage to, or loss of, freight, while upon its road, and if damage or loss should occur which cannot be located, it agrees to bear and pay its proportion thereof, based on the gross earnings of the several companies over whose roads the freight was carried, provided the Car Company shall have furnished for the service good and serviceable refrigerator cars in proper condition and shall have properly iced the cars when it is the duty of the Car Company to attend to the icing.

Twelfth. This agreement shall continue in force and effect for the period of one year from the date hereof, and thereafter from year to year, until the party desiring to terminate it has given the other one (1) year's written notice of such desire.

87 In witness whereof, the parties hereto have caused this instrument to be executed the day and year first above written.

[SEAL.]

THE NEW YORK CENTRAL AND
HUDSON RIVER RAILROAD
COMPANY,

(Signed) By CHAUNCEY M. DEPEW,
President.

Attest.

(Signed) E. W. WORCESTER,
Secretary.

[SEAL.]

CHICAGO BOSTON & LIVERPOOL
COMPANY,

(Signed) By GREENLIEF W. SIMPSON,
President.

88 When the West Shore cancelled this contract we made arrangements with Delaware, Lackawanna & Western under which we operated up to the beginning of Federal Control, with some modifications, as appears from letters of December 16, 1914, May 9, 1916, and November 14, 1916, attached to the contract. The contract and letters were identified by the witness and were offered in evidence as "Plaintiff's Exhibit 6" and are as follows:

89 PL'FF'S EXHIBIT 6.

(Copy.)

Delaware, Lackawanna & Western Railroad Co.,
Traffic Department,
New York City.

ABT Claim I—698756.

GFD Claim M—21652.

November 14, 1916.

Mr. C. J. Hyland,
Sec. New York Despatch Refrigerator Line,
Chicago, Ill.

DEAR SIR:

Your letter of October 23rd, file CJH, with regard to your bill for commissions on shipments of Oleo.

It is our interpretation of the agreement between your company and ours, that we would not be asked to or would we pay commissions on shipments of packing house products. Oleo is a packing house product. On such shipments of this commodity in car lots, although same may move in N. Y. D. L. equipment, we would not be required to pay commission. We are agreeable to paying commission on any less carload shipments of this commodity which may

be tendered to you at Chicago or other points which may be tendered to you for transportation in your regular dairy service.

Please advise if this is not also your understanding.

Yours truly,

(Signed)

NAT DUKE,
Asst. Freight Traffic Manager.

90

(Copy.)

The Delaware, Lackawanna & Western Railroad Co.

File C-21267.

May 9, 1916.

Mr. C. R. Cooper,
President & General Manager,
New York Despatch Refrigerator Line,
901 Merchants Loan & Trust Bldg.,
Chicago, Ill.

DEAR SIR:

Referring to your letter of the 20th ultimo, and confirming our conversation here on Friday last regarding commissions on dairy products handled in connection with New York Despatch Refrigerator Line to New York via D. L. & W. R. R.

This is to advise you that, effective March 15th, we will accept bills from you for our proportion of commission $12\frac{1}{2}\%$ on New York business, including lighterage of 3¢ per 100 lbs., which up to this time had been deducted prior to arriving at the amount of commission due you.

Necessary instructions have been issued to all concerned.

Yours truly,

(Signed)

JNO. H. CRAWFORD,
Freight Traffic Manager.

91

(Copy.)

December 16th, 1914.

Mr. D. E. Dalrymple,
Vice-President, Grand Trunk Railway System,
Montreal, Que., Canada.

DEAR MR. DALRYMPLE:

Supplementing ours of the 11th in regard to the proposed working arrangement with the Chicago, New York & Boston Refrigerator Line,

Permit me to say that we have just had a conference with General Manager Cooper and I think the matter has been very fully discussed, with the following understanding:

That in addition to the allowance of $12\frac{1}{2}\%$ of the earnings accruing to our Company, after the deduction of the New York lighterage on shipments of butter, eggs, game, dressed poultry, and cheese, it has been decided to also include in the list condensed milk, in earloads, the allowance on the latter to be 10% .

Concerning the question of icing; while Mr. Cooper expressed himself as feeling that it should be treated as a line proposition, the refrigerator line to participate to the extent of its commission, it was finally decided out of deference to our wishes to have our respective roads take care of their own icing, bills to be rendered monthly against the refrigerator line for its proportion.

Yours very truly,

(Signed)

P. J. FLYNN,
Vice-President.

Copy Messrs. Crawford, Duke, Hustis, Thompson, McGeoy, Cooper.

92

PLT. EX. 6.

(Copy.)

December 11th, 1914.

Mr. J. E. Dalrymple,

Vice-President, Grand Trunk Railway System,
Montreal, Que., Canada.

DEAR MR. DALRYMPLE:

Referring to your 12708 of November 30th, in regard to proposed working arrangement with the Chicago, New York & Boston Refrigerator Line.

Mr. Seager, our Commerce Counsel, having today approved the proposition in the light of the information furnished by yourself and Mr. Diggar, your General Counsel, we beg to advise you that, effective December 1, 1914, this Company will pay the Chicago, New York & Boston Refrigerator Line a commission of $12\frac{1}{2}\%$ of the earnings accruing to us on shipments of butter, eggs, cheese and game and dressed poultry, generally termed "Dairy Products," in earloads.

We will include the so-called "pick-up" traffic for the present, with the understand-, however, that same will reach us with favorable loading per car and that, in the event of the claims arising from this particular traffic appearing burdensome, we will be at liberty to decline it on due notice to yourself or Manager Cooper.

Trusting that we may be favored with a substantial tonnage regularly, especially for our long haul points, such as Newark and Hoboken, N. J., and Greater New York Stations.

Yours truly,

(Signed)

P. J. FLYNN,
Vice-President.

Copy to Mr. Cooper, Messrs. Crawford, Duke, Hustis, Thompson, McGeoy.

93 We also made a contract with the Lehigh Valley Railroad Company under which we operated until Federal Control commenced. This Contract was identified by the witness offered in evidence as "Plaintiff's Exhibit 7" and is as follows:

94

PLT. Ex. 7.

Personal.

February 25th, 1915.

Mr. T. N. Jarvis,
Vice-President, Lehigh Valley Railroad Company,
New York, N. Y.

DEAR SIR:

Commission Allowance.

Referring to our conversation 24th inst., we beg to advise that we are willing to enter into an agreement with the Lehigh Valley Railroad Company whereby we will route shipments of "Dairy traffic," butter, eggs, game, dressed poultry and cheese, in their care destined to points on their Line and connections, the Chicago, New York and Boston Refrigerator Company to receive a commission of $12\frac{1}{2}\%$ of gross earnings (on business for New York, lighterage to be deducted).

Icing charges to be prorated as a line expense, the Chicago, New York and Boston Refrigerator Company paying $12\frac{1}{2}\%$ of same.

On shipments of condensed milk, the Railroad Company to allow the Refrigerator Company 10% of gross earnings.

All bills to be rendered monthly. Remittance to be made as soon as possible, allowing reasonable time for checking.

This agreement effective January 1st, 1915, and shall remain in force between parties hereto from year to year, and twelve months' previous notice given in writing by the party desiring to terminate same.

CHICAGO, NEW YORK & BOSTON
REFRIGERATOR CO.,

(Signed) By C. R. COOPER,

President & General Manager.

LEHIGH VALLEY RAILROAD CO.,

(Signed) By T. N. JARVIS,

Vice-President.

95 We made a contract with the Delaware and Hudson Railroad Company on or about January 4, 1915, and operated under it until Federal Control commenced. This contract was identified by the witness, offered in evidence as "Plaintiff's Exhibit 8" and is as follows:

96

PLT. EX. 8.

(Copy.)

The Delaware and Hudson Company,
Freight Department,
Albany, New York.

File Clm. A-437070. Desk W.

January 4th, 1915.

Mr. C. R. Cooper,
G. M., New York Despatch Refg. Line,
National Despatch Refg. Line,
Chicago, Ill.

DEAR SIR:

Replying to yours of December 23rd respecting the matter of our allowing the Refrigerator Lines which you represent $12\frac{1}{2}\%$ of our gross earnings on shipments of butter, eggs, cheese and dressed poultry and 10% of our gross earnings on condensed milk, would say our people have given further consideration to this matter and we are now prepared to say to you that on and after January 1st, 1915, we will allow you the above commissions upon traffic destined to competitive points on our line and upon traffic destined to points beyond our line, but not to points non-competitive or local to our line.

Such allowances to be paid upon receipt of statement from you accompanied by your bill rendered monthly.

The foregoing arrangements to be cancelled at any time upon thirty (30) days' notice.

All of the foregoing is predicated upon your previous letter stating that the commissions which are paid to you are not used in any way contrary to the provisions of the Interstate Commerce Act.

Very truly,

(Signed)

bu.

PAUL WADSWORTH,
Freight Traffic Manager.

97 From 1897 down to the beginning of Federal Control, the operation of petitioner's business was along substantially the same lines and in substantially the same manner that it was at the time Federal Control commenced. There was no change. We solicit freight in Michigan, Illinois, Iowa, Missouri, Kansas, Nebraska, Minnesota, Wisconsin, North and South Dakota, and a little in Texas, Arkansas and Oklahoma. A description of the manner in which the business was operated immediately prior to Federal Control will be descriptive of its operation for the entire period subsequent to 1897. Our men in the field are called travelling agents. They call on the shippers in their territory and also on the railroad officers and agents. They do everything in their power to secure

business for the company. They correspond to traffic representatives of a railroad Company. Our business is confined to certain classes of traffic; butter, eggs, dressed poultry, cheese and condensed milk, all of which moves in refrigerator cars. We have specialized in handling this traffic ever since we commenced business. We consider these highly perishable products and they have to have special care. We not only solicit business from the shipper but we look after it from start to finish; that is, we trace the cars through from Chicago to destination, always advising the shipper or receiver where the cars are. Receivers always want to know where the goods are as a large quantity of dairy products are sold before they get in. We see that the cars are properly iced at all icing stations—that this, we give instructions to that effect. Reports are given to us at all junction points. We frequently divert shipments in transit. The shipper or receiver asks to have a car diverted because he thinks by so doing he can get a better market. We have earloads of eggs that are destined for cold storage. These cars are often started on the road and consigned to the owner at New York. He does not know where he is going to sell them. He has not sold them but they are rolling. Now he might sell the cars to go into Boston, Philadelphia, or New Jersey storage. We change the routing for him. The shipper notifies us and we wire the proper division superintendent to change them. If a car is reconsigned at Chicago, we take up the country bill of lading, issue a new one and bill the car out. This happens on shipments originating west of Chicago. We issue a New York Dispatch bill and it is signed by our men in my name. This paper is the order bill of lading in use by our company. We use also a straight bill of lading. Copies of both these forms are attached to the petition in this case. The order bill of lading was now offered in evidence as "Plaintiff's Exhibit 9, Sheet 1" and is as follows:

(Here follows Plaintiff's Exhibit 9, marked page 99.)

100 These bills of lading are used when freight is reconsigned and also when it is originally billed to us. We bill freight out of Chicago on our own bills of lading. We handle about 12,000 cars of freight in one year, and we were handling that number when Federal Control commenced, and had been for some time previously. When we issue a bill of lading the freight moves to destination on that bill, and in such case no railroad bill of lading is issued unless the car is afterwards reconsigned. About ten per cent of all traffic moves on bills of lading which are issued by our Company, and signed by me or by my agents. Some traffic moves without bill of lading. The shipper gets a receipt and he is satisfied. I should say that 50 per cent moves this way. The receipts issued at Chicago are on our form. When shipments are en route we get reports at Buffalo, Port Huron and St. Albans. Buffalo means either Suspension Bridge where freight is delivered to the Lehigh Valley, or Black Rock where delivery is made to the Delaware, Lackawanna & Western

Plt. Ex. 9
Sheet 1

CHICAGO, NEW YORK AND BOSTON REFRIGERATOR CO.

C. B. CROPPER, Pres. and Gen. Mgr.
Rm. 202, 101 Quincy St., Chicago

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ADVERT-2 800

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading, and

[illegible]

The Rate of Freight from

														— 12 in Cents per 100 Lbs.			
1st Class	2nd Class	3rd Class	4th Class	5th Class	6th Class	7th Class	8th Class	9th Class	10th Class	11th Class	12th Class	13th Class	14th Class	15th Class	16th Class	17th Class	18th Class

Consigned to **ORDER OF**

(Mail Address—Box for purposes of delivery.)

Consigned to **ORDER OF**

Residence _____ State of _____ County of _____

Notify

At _____ State of _____ County of _____

Route _____ County of _____
Car Initial _____ Car No. _____

NO. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMNS	REMARKS
	<p>No. 3882, Special Calendar No. 30. United States, ex relatione, Chicago, New York & Boston Re- frigerator Company, a Corporation, Appellant.</p> <p>vs. Interstate Commerce Commission.</p>				<p>If charges are to be prepaid, write or stamp here, "To be Prepaid."</p> <p>Received \$ _____ to apply in prepayment of the charges on the property described hereon.</p> <p>Agent or Cashier,</p> <p>Per: _____ (The signature here authorizes only the amount prepaid.)</p> <p>Charges Advanced: _____</p>

Shipper

Aggravated

(This Bill of Lading is to be signed by the shipper and agent of the carrier following same.)



Plt. Ex. 10

New York Despatch Refrigerator Line National Despatch Refrigerator Line

Steamer No. XI 58

May 1st, 1916

CHICAGO, APRIL 28, 1916

TO SHIPPERS:

Following is a list of Cold Storage Houses located at Western Ports, reached by these Lines. Special NEW YORK or NATIONAL Despatch Refrigerator Cars will be furnished for carload shipments of EGGS, DRESSED POULTRY and DAIRY PRODUCTS, consigned to or in care of these Cold Storage Houses. Shippers are requested to route only NEW YORK DESPATCH LINE, specifying delivering R. R. named below:

NAME OF COLD STORAGE	LOCATION	RAILWAY	RATE
Hopkins Ice & Refrigerator Co.	Albany	D. & W. P. & L. Albany	Albany
Quincy Market Cold Storage Co.	Boston	B. & N. E. F. Albany	Boston
Boston Terminal Refrigerating Co.	Boston	Boston & Albany (via Mass.)	Boston
Buffalo Cold Storage Co.	Buffalo	Grand Trunk, L. I. Albany	Buffalo
Assort Ice & Cold Storage Co.	Buffalo	Grand Trunk, P. & L. Albany	Buffalo
Binghamton Cold Storage Co.	Binghamton	D. & W.	Binghamton
Boston Refrigerating Co.	Boston	Del. & Hudson	Boston
Boston Cold Storage Co.	Boston	N. Y. H. & H.	Boston
King County Refrigerating Co.	Boston	Boston & Maine	Boston
National Cold Storage Co.	Boston	D. & W. or V. R. R.	Boston
Hypox Refrigerating Co.	Boston	L. V. R. R.	Boston
Elmore Bros. Cold Storage Co.	Boston	N. Y. H. & H.	Boston
P. Barry & Sons	Boston	Boston & Maine	Boston
Holyoke Cold Storage	Holyoke	Boston & Maine	Boston
Marquette Refrigerating Co. of N. J.	Marquette	Boston & Maine	Boston
Eastern States Refrigerating Co.	Marquette	Boston & Maine	Boston
Quincy Terminal Refrigerating Co.	Quincy	Boston & Maine	Boston
Ludlow Cold Storage Co.	Ludlow	Boston & Maine	Boston
Leeds Cold Storage Co.	Leeds	Boston & Maine	Boston
S. H. Dwyer Co.	S. H. Dwyer	Boston & Maine	Boston
George Thomas Co.	George Thomas	Boston & Maine	Boston
E. W. Mayers Co.	E. W. Mayers	Boston & Maine	Boston
Marquette Cold Storage	Marquette	Boston & Maine	Boston
Marquette Refrigerating Co. of N. J.	Marquette	Boston & Maine	Boston
Boston Storage & Refrigerating Co.	Boston	Boston & Maine	Boston
Marquette Refrigerating Co.	Marquette	Boston & Maine	Boston
Boston Refrigerating Co.	Boston	Boston & Maine	Boston
Indefatigable Cold Storage Co.	Indefatigable	Boston & Maine	Boston
Wilkeson & Condit Storage	Wilkeson	Boston & Maine	Boston
Dillon & Douglas	Dillon & Douglas	Boston & Maine	Boston
L. C. Stone & Co.	L. C. Stone & Co.	Boston & Maine	Boston
J. L. Humphrey, Jr.	J. L. Humphrey, Jr.	Boston & Maine	Boston
H. W. Clark Fresh Cold Storage Co.	H. W. Clark Fresh Cold Storage Co.	Boston & Maine	Boston
J. G. Tarbell Co.	J. G. Tarbell Co.	Boston & Maine	Boston
Philadelphia Warehousing & Cold Storage Co.	Philadelphia	Boston & Maine	Boston
Industrial Cold Storage & Warehousing Co.	Industrial	Boston & Maine	Boston
New England Cold Storage	New England	Boston & Maine	Boston
Pottsville Cold Storage Co.	Pottsville	Boston & Maine	Boston
Marquette Freezing & Cold Storage Co.	Marquette	Boston & Maine	Boston
Pottsville Warehousing	Pottsville	Boston & Maine	Boston
New England Cold Storage Co.	New England	Boston & Maine	Boston
S. W. Upson Cold Storage Co.	S. W. Upson	Boston & Maine	Boston
P. & C. Cronin Co.	P. & C. Cronin	Boston & Maine	Boston
Reading Cold Storage Co.	Reading	Boston & Maine	Boston
Eastern States Refrigerating Co.	Eastern States	Boston & Maine	Boston
Bay State Storage & Warehousing Co.	Bay State	Boston & Maine	Boston
Syracuse Cold Storage Co.	Syracuse	Boston & Maine	Boston
Marquette Freezing & Cold Storage Co.	Marquette	Boston & Maine	Boston
Syracuse Cold Storage Co.	Syracuse	Boston & Maine	Boston
Lehigh Valley Cold Storage Co.	Lehigh Valley	Boston & Maine	Boston
Troy Cold Storage Co.	Troy	Boston & Maine	Boston
Utica Cold Storage Co.	Utica	Boston & Maine	Boston
Genesee Storage Cold Storage	Genesee	Boston & Maine	Boston
Worcester Cold Storage & Warehousing Co.	Worcester	Boston & Maine	Boston
South Wright & Sons Cold Storage	South Wright	Boston & Maine	Boston
Windsor Cold Storage	Windsor	Boston & Maine	Boston

Any further information desired will be promptly furnished on application to any of the Agents for the Company

- | | |
|--|---------------------------------------|
| G. B. GERRARD, Agent, Kansas City, Mo. | E. W. BENNETT, Agent, Milwaukee, Wis. |
| D. A. COLEMAN, Agent, Omaha, Neb. | R. G. HOLMES, Agent, New York City. |
| A. J. BURKE, Agent, St. Paul, Minn. | J. A. FORTY, Agent, Boston, Mass. |
| I. N. PETERSON, Agent, Detroit, Mich. | H. D. BROWN, Agent, Philadelphia, Pa. |
| C. R. COOPER, Agent, St. Louis, Mo. | S. E. JAMES, Agent, New York City. |
| W. A. LALLY, Agent, Chicago, Ill. | K. J. DELANGER, Agent, New York City. |

Room 901, 112 West Adams St.
CHICAGO, ILL.



New York Despatch Refrigerator Line National Despatch Refrigerator Line



Circular No. 77. 64

Will Receive at Grand Trunk Railway, Taylor Street and Plymouth Place

Butter, Eggs, Cheese and Dressed Poultry

In any quantity and will forward in Refrigerator Cars, Daily (EXCEPT SUNDAYS AND) from Chicago

New York	N. Y.	Boston	Mass.	Buffalo	N. Y.	Philadelphia	Pa.
Albany	N. Y.	Brooklyn	N. Y.	Jersey City	N. J.	Rochester	N. Y.
Newark	N. J.	Syracuse	N. Y.	Troy	N. Y.	Utica	N. Y.

Through Refrigerator Cars—N. Y., N. H. & H. R. R. Points

Bridgeport	Conn.	Hartford	Conn.	New Bedford	Mass.
Fall River	Mass.	New Haven	Conn.	Providence	R. I.

†N. Y. N. H. & H. R. R. will give shipments of 10,00 lbs. or over through Refrigerator Car service to these points.
We can also handle in any quantity daily via New York and Boat.

Through Refrigerator Cars

Seranton	Pa.	Wilkesbarre	Pa.	Pittston	Pa.
Binghamton	N. Y.	Elmira	N. Y.	Elizabeth	N. J.

L. C. L. shipments from Chicago daily—service small lots irregular at present.
better phone undersigned if any shipments to offer.

New England States Points

Carload Shipments to points below forwarded daily
L. C. L. Shipments to these points—Refrigerator Cars from Chicago, THURSDAYS connecting with
Central Vermont Refrigerator Service from St. Albans, Vermont, TUESDAYS

Burlington	Vt.	Holyoke	Mass.	Manchester	N. H.	Springfield	Mass.
Concord	N. H.	Lawrence	"	Nashua	"	St. Albans	Vt.
Essex Junction	Vt.	Lowell	"	New London	Conn.	Wilmington	"
Haverhill	Mass.	Lynn	"	Norwich	"	Worcester	Mass.

†Refrigerator service can only be given to shipments of 6,000 lbs. and over to these points.

Grand Trunk Railway System

Valparaiso, Ind.—Tuesdays and Thursdays
Traffic for following points loaded in this car
Crumstown Ind.
Haskells Ind.
Kingbury Union Mills.
Mill Creek Wellsboro

South Bend, Ind.—Daily

Mishawaka, Ind.—Tuesdays and Thursdays
Traffic for following points loaded in this car
Cassopolis Mich.
Climax " "
Edwardsburg " "
Granger " "
Indian Lake " "
Vicksburg " "

Battle Creek, Mich.—Daily

Traffic for following points loaded in this car
Bellevue Mich.
Charlotte " "
Millet " "

Lansing, Mich.—Tuesdays, Thursdays and Saturdays

Traffic for following points loaded in this car
Bancroft Mich.
Hastlett " "
Morrie " "
Trowbridge " "

Duffield, Swartz Creek and Otterburn, Mich.

Traffic for following points loaded in this car
Duffield Mich.
Swartz Creek " "
Otterburn " "

Where service is one, two or three days per week, and such days fall on legal holidays, service will be given day previous in lieu thereof.

Special Refrigerator Cars to all points in New England and States of New York, Pennsylvania and New Jersey, and all points on Grand Trunk R'y System in Canada

Legal Holidays:—New Years, Decoration, Independence, Labor, Thanksgiving and Christmas Days.

**Car Loads From Connecting Roads for Any Point reached via these Lines,
will be Forwarded Daily, Including Sundays and Holidays**

For Service to Points Not Named Above please confer with the undersigned:

W. A. LALLY, **E. J. BELANGER**, C. R. COOPER,
GENERAL AGENT Y. P. HOLLEN, PRESIDENT AND GENERAL MANAGER

Telephone **WAB3033** **4553333** **4553333** Chicago, Ill., February 1, 1924

Mandala 5455 112 West Adams St.

No. 3882, Special Calendar No. 30.

United States, ex relations,

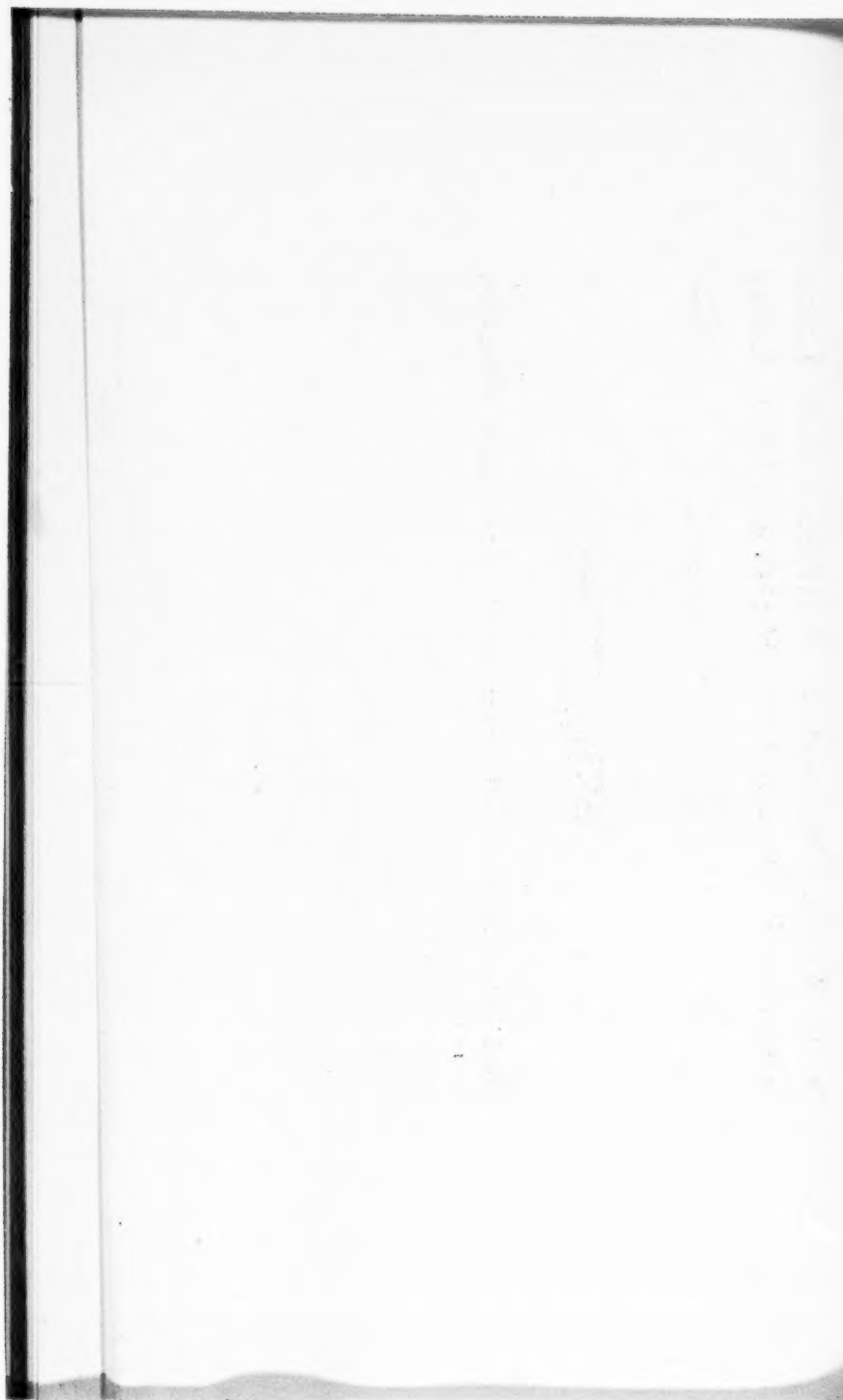
Chicago, New York & Boston Re-

frigerator Company, a Corporation,

Appellant,

vs.

Interstate Commerce Commission.



Railroad Company. If we receive instructions to divert a shipment we do so and it moves according to our directions. No one else can divert that shipment. None of the railroads can exercise any control over the movement without our sanction. If a car moving from the west is reconsigned at Chicago, it is either delivered on tracks or to us. It will not move further without our direction. We give the direction for the movement of that car to the east. Our traffic moves from Chicago to Port Huron, Michigan, over the line of the Grand Trunk Western Railroad Company; if the traffic is destined for Boston it goes from thence on Grand Trunk main line to Coteau Junction, and the rest of the way over the Central Vermont and Boston and Maine. If freight is moving to New York it moves from Port Huron over the Grand Trunk to Buffalo and from thence to New York over either the Lehigh Valley or the Delaware, Lackawanna & Western. If traffic is going to Philadelphia it moves from Buffalo over the Lehigh Valley. Those are our three principal destinations in the east. Our traffic, as a whole, is between Chicago in the West and New York, Boston and Philadelphia in the East and is over these lines with which we have contracts. When the cars are unloaded most of them are sent back empty, and when they arrive in Chicago they are at our disposition. We have a system of cleaning and repairing. When the cars are ready for distribution we send them out to Western roads and a certain number to team track in Chicago. We have to have cars in good condition to receive butter, for instance, and it is necessary that particular care be given. After the cars are cleaned our representative inspects them. The cars follow continuously the routes described. We issue circulars to the trade and have ever since we have been in business. These circulars shown me are substantially the same in general effect as they have been all the time. We accept shipments of commodities destined for points in the east on lines other than those lines with which we have contracts for commissions, but do not attempt to haul less than a carload shipment to any outlying point.

We issue, once a year, to all our patrons in the West, a circular which contains a list of all cold storage houses in the East. We have done this for twenty years. This paper shown me is one of the circulars referred to. This paper was offered in evidence as "Plaintiff's Exhibit 10" and is as follows:

(Here follows Plaintiff's Exhibit 10, marked page 102.)

103 The paper shown me is a notice of daily service which we undertake to accomplish out of Chicago for Eastern points. This is generally issued once a year, but sometimes twice a year. We have done this for twenty years prior to Federal Control. The paper shown the witness was offered in evidence as "Plaintiff's Exhibit 11" and is as follows:

(Here follows Plaintiff's Exhibit 11, marked page 104.)

105 The paper shown me is a circular of icing instructions which we issue to the foremen of all icing stations on the line and also to division superintendents and general freight agents. This paper was now offered in evidence as "Plaintiff's Exhibit 12" and is as follows:

(Here follows Plaintiff's Exhibit 12, marked page 106.)

107 The paper shown me is a circular to shippers of dressed poultry and has been issued to our trade once a year for twenty years. This paper was offered in evidence as "Plaintiff's Exhibit 13" and is as follows:

(Here follows Plaintiff's Exhibit 13, marked page 108.)

109 The cars which petitioner owns are marked "New York Despatch Refrigerator Line" and some are marked "National Despatch Refrigerator Line". Immediately prior to Federal Control we had in service 1,340 cars. These moving to the East carry no freight except ours and are always loaded with refrigerated dairy products, except that at times some of our equipment is used by packers and with this latter we have nothing to do. Shipments which originate west of Chicago are routed care of New York Despatch which is a trade name for petitioner. National Despatch is also a trade name for petitioner. When these shipments reach Chicago they are delivered to Grand Trunk Western Railroad Company and are then subject to our direction. These shipments that were routed in our care were handled east of Chicago on the lines which I have mentioned because we had our organizations, likewise our icing arrangements and arrangement for supervision of the shipments, over these lines. Prior to Federal Control, if a shipper elected to prepay freight we accepted his check. We gave a certain line of credit to shippers to whom credit was extended by Grand Trunk.

"Q. And your company (Petitioner) extended that credit?"

A. The credit was given by the local Treasurer of the Grand Trunk."

We were responsible for the collection, and we paid the freight charges to Grand Trunk Railway Company. When we gave credit we gave instructions for the car to move and ordered it billed prepaid. We turned over to the railroad company all freight collected and subsequently there was a division of this revenue between my company and the railroad companies. Prior to 1897 there was no segregation of the solicitation of dairy traffic and the solicitation was carried on by the railroad companies and embraced all freight traffic. In 1897 that practice ceased and petitioner took on the solicitation of freight and organized for that purpose limiting its solicitation to dairy products. Prior to Federal Control petitioner investigated adjusted and paid all loss and damage and over-

110

Ice Instructions

No. 57

(Cancelling all previous issues)



Taking Effect May 28, 1920

and governing shipments

Butter, Eggs, Cheese and
Dressed Poultry

GENERAL OFFICES

CHICAGO, ILL.

NEW YORK DESPATCH REFRIGERATOR LINE

CHICAGO, NEW YORK AND BOSTON REFRIGERATOR CO.

BUNKERS SHOULD CONTAIN WHEN CARS ARE LOADED WITH

WHEN CARS LEAVE STATIONS NAMED BELOW	+DRESSED POULTRY (Butter, Eggs and Cheese)		BUTTER or Milk (Butter, Eggs and Cheese)		EGGS (only)		CHEESE (only)	
	Pounds of Ice		Pounds of Ice		Pounds of Ice		Pounds of Ice	
CHICAGO, ELDON, BLUE ISLAND, HARVEY, KANKAKEE, JOLIET, GRAND HAVEN	5000		4000		4000		4000	
PORT HURON TUNNEL	5000		4000		4000		4000	
EAST BUFFALO	5000		4000		4000		4000	
GOULDSBORO	5000		4000		4000		4000	
FRANKFORT	5000		4000		4000		4000	
MANCHESTER	5000		4000		4000		4000	
MAHONING	5000		4000		4000		4000	
KARNERS *	5000		4000		4000		4000	

MAKE NOTATIONS ON WAY-BILLS AND TALLY SLIPS AT BILLING POINTS

For New York Despatch Traffic and Chicago, New York & Boston Refrigerator Co. Traffic:

POULTRY, BUTTER, EGGS or CHEESE.--Straight or Mixed Lots:

ON BUSINESS ROUTED VIA D. L. & W. R. R.--Re-ice at Port Huron Tunnel, East Buffalo and Gouldsboro.

ON BUSINESS ROUTED VIA LEHIGH VALLEY R. R.--Re-ice at Port Huron Tunnel, Manchester and Mahoning.

GRAND HAVEN	5000	4000	4000	4000
PORT HURON TUNNEL	5000	4000	4000	4000
YORK, ONT.	5000	4000	4000	4000
COTEAU JCT., P. Q.	5000	4000	4000	4000
WHITE RIVER JUNCTION	5000	4000	4000	4000

MAKE NOTATIONS ON WAY-BILLS AND TALLY SLIPS AT BILLING POINTS

For National Despatch Traffic
 POULTRY, BUTTER, EGGS or CHEESE.—Straight or mixed lots.—Re-ice at Port Huron Tunnel, York, Coteau Junction and White River Junction.
 MICHIGAN TRAFFIC.—Same as New York Despatch Traffic.

It will be unnecessary to ice cars when they require less than 1,000 pounds to make up maximum shown above.
 SPECIAL ICING INSTRUCTIONS FROM SHIPPERS OR ON WAY-BILLS SHOULD ALWAYS BE FOLLOWED. THE INSTRUCTIONS NAMED ABOVE TO GOVERN IN ABSENCE OF SPECIAL INSTRUCTIONS.
 Port Huron Tunnel agents will please show same notations on way-bills and tally slips for Michigan business as Chicago Junctions agents are instructed to show on traffic from Western states points.
 Agents in charge of icing stations are requested to report on Proper Forms promptly on the same day cars pass the Ice House, the estimated amount of ice in use bunkers on arrival and the amount added.
 In case any cars arrive with less than 500 pounds of ice agents will please report particulars by wire.
 Where Western Roads Billing or Shippers Instructions carry notation "DO NOT ICE"—Agents are requested to communicate with this office immediately if in their opinion weather conditions would warrant icing.

+Cars containing Poultry should be iced with Crusted Ice and 10¢ Salt.
 C. R. COOPER, Pres and Gen'l Mgr.
 803-181 QUINCY STREET.

No. 3882, Special Calendar No. 30.
 United States, ex Relation,
 Chicago, New York & Boston Refrigerator Company, a Corporation,
 Appellant,
 vs.
 Interstate Commerce Commission.

Page 106.

NEW YORK DESPATCH REFRIGERATOR LINE NATIONAL DESPATCH REFRIGERATOR LINE

CHICAGO, NEW YORK AND BOSTON REFRIGERATOR CO.

C. R. COOPER
PRES. AND GEN'L MGR.
W. A. LALLY
GENERAL AGENT
CHICAGO
S. E. JAMES
AGENT
S. J. BELSHOR
AGENT
D. A. COZZENS
AGENT
OMAHA, NEB.
S. W. BENNETT
AGENT
MILWAUKEE, WIS.



A. J. BURNS, AGENT
ST. PAUL, MINN.
S. B. GRESHAM, AGENT
KANSAS CITY, MO.
JOHN OFFENLOCK, AGENT
DEN MOINES, IA.
I. N. PETERSON, AGENT
DETROIT, MICH.

AGENCIES IN
NEW YORK
PHILADELPHIA
AND OTHER EASTERN PORTS
BOSTON
BUFFALO

GENERAL OFFICES, 121 QUINCY ST.
112 West Adams St.

CHICAGO October 28th, 1915.

TO SHIPPERS DRESSED POULTRY:

We want to take this opportunity of thanking the trade for the confidence shown by them in consigning their shipments to our Care.

This confidence has enabled us to build up our service to such an extent that we are in a position to carry your goods to the principal points in the East, insuring the most efficient handling to New York, Boston, Philadelphia, Buffalo, Providence and other eastern and New England points.

We have on track at CHICAGO, DAILY EXCEPT SUNDAY, Ice Refrigerator Cars to receive LESS THAN CARLOAD shipments of Dressed Poultry consigned "Care New York Despatch Refrigerator Line," same being forwarded without delay.

CAR LOADS FROM CONNECTING ROADS FOR ANY POINT REACHED VIA THESE LINES WILL BE FORWARDED DAILY.

Our Equipment can be obtained for through carload shipments by placing your order for New York Despatch Refrigerator Cars direct with the Station Agent of the railroad over which you desire to ship, a few days before you wish to load; also advise this office by postal or wire. In case the railroad furnish foreign cars to protect orders for our equipment, we will see that such foreign cars are sent through without transfer and be sure and route "New York Despatch Line."

Route all shipments

CARE

NEW YORK DESPATCH

CHICAGO, ILL.

Shipments from country points by EXPRESS should be routed Care NEW YORK DESPATCH, CHICAGO to insure delivery to our line.

The American Railway Express Company have recently issued instructions as to tagging shipments which are forwarded by express and railroads, which it would be well to take up with your Station Agent for instructions before you ship.

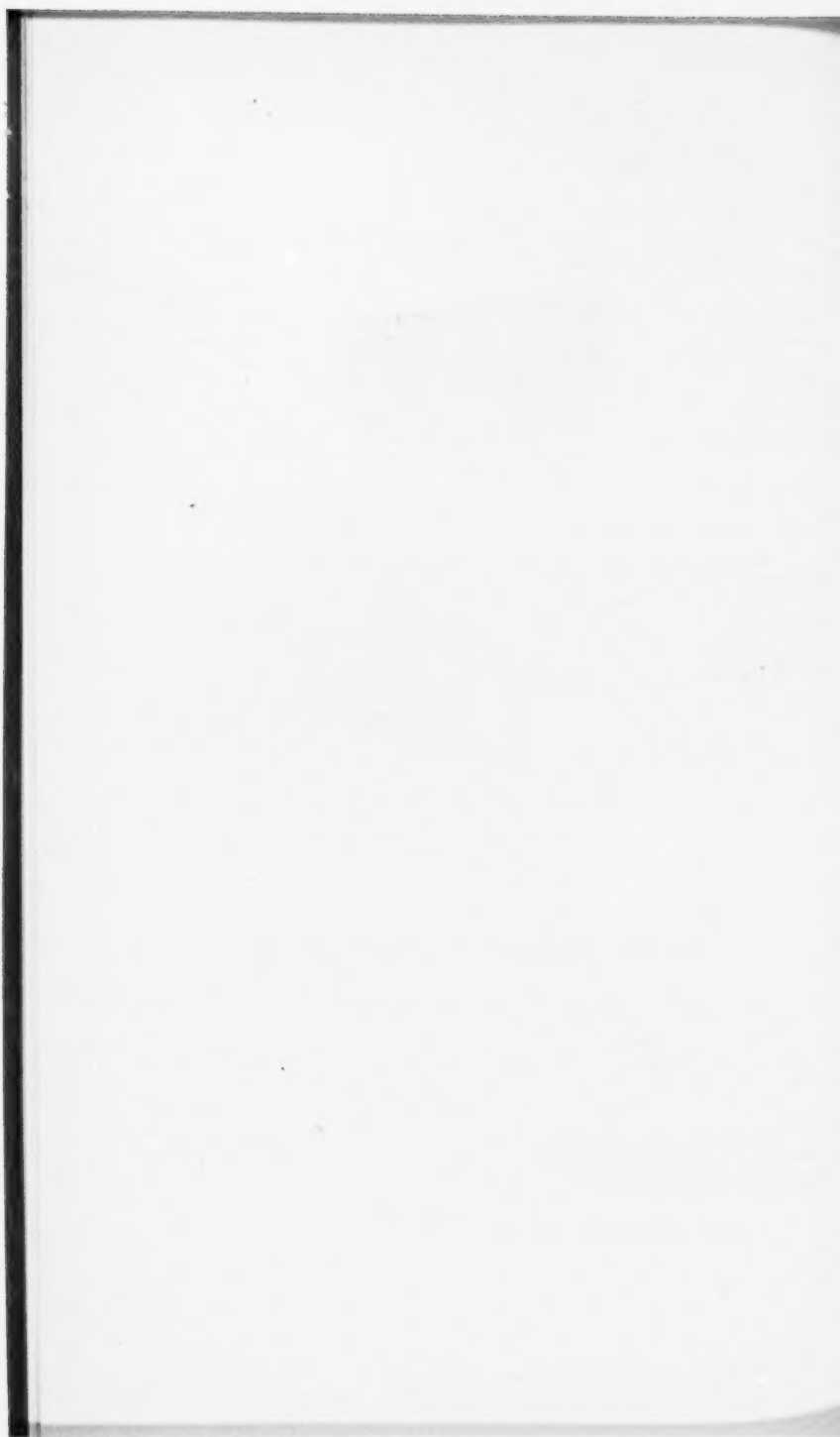
Thanking you for your patronage and soliciting a continuance of the same, we remain,

No. 3882, Special Calendar No. 30.
United States, ex relations,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

C. R. COOPER,
Pres. and Gen'l Mgr.

vs.
Interstate Commerce Commission.

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charge claims for the traffic that moved in our cars. Overcharge claims we prorated among the roads interested in the haul. Loss and damage claims were also pro rated this way unless the loss or damage was occasioned by the negligence or misconduct of petitioner in which case we paid it all. The contracts in evidence all provide for a revenue moving to petitioner on freight. This was 12 and one half per cent of the total freight revenue on freight carried in our cars, and for this we made a statement each month and collected of the various railroad companies. In the different states where our cars move taxes are assessed against our earnings on these cars and we pay these taxes to the Treasurer of each state interested making the payments ourselves. We made a contract with the Director General of Railroads for the use of our property during Federal Control. Prior to that we had made an arrangement with Mr. Prouty of the Railroad Administration that up to the first day of June 1918, we should operate as we had been accustomed to operate. I have with me the contract I made with the Director General. This contract was offered in evidence as "Plaintiff's Exhibit 14" and is as follows:

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PLTFF'S. No. 14.

Contract Custodian's No. 1174.

Agreement between the Director General of Railroads and the Chicago, New York and Boston Refrigerator Company.

March 12, 1920.

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Preamble and Recitals.

This Agreement, made this 12th day of March, 1920, between *Walker D. Hines*, Director General of Railroads, hereinafter called the Director General, acting on behalf of the United States and the President, under the powers conferred by the proclamations of the President hereinafter referred to, and the *Chicago, New York, and Boston Refrigerator Company*, a corporation duly organized under the laws of the state of Maine, hereinafter called the Company:

Witnesseth that—

(a) Whereas by a proclamation dated December 26, 1917, the President, acting under the powers conferred on him by the Constitution and laws of the United States, by the joint resolutions of the Senate and House of Representatives bearing date April 6 and December 7, 1917, respectively, and particularly under the powers conferred by section 1 of the act of Congress approved August 2, 1916, entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1917, and for other purposes," took possession and assumed control at 12 o'clock noon on December 28, 1917, of certain railroads and systems of transportation, and directed that the possession, control, operation, and utilization of the transportation systems thus taken should be exercised by and through William G. McAdoo, appointed Director General of Railroads; and

(b) Whereas the Congress of the United States, by an act approved March 21, 1918, hereinafter called the Federal control act, has authorized the President to enter into agreements with the companies owning the railroads and systems thus taken over for the maintenance and upkeep of the same during the period of Federal control, for the determination of the rights and obligations of the parties to the agreement arising from or out of Federal control, including the compensation to be received or guaranteed, and for other purposes, as in said act more fully set out, and authorized the President to exercise any of the powers by said act or theretofore granted him with relation to Federal control through such agencies as he might determine; and

(c) Whereas by a proclamation dated March 29, 1918, the President, acting under the Federal control act and all other powers hereby thereto enabling, authorized the Director General, either personally or through such divisions, agencies, or persons, as he may appoint, and in his own name or in the name of such divisions, agencies, or persons, or in the name of the President, to agree with the carrier or any of them, or with any other person in interest, upon the amount of compensation to be paid pursuant to law, and to sign, seal, and deliver in his own name or in the name of the President or in the name of the United States such agreements as may be necessary and expedient with the several carriers or other persons in interest respecting compensation, or any other matter concerning which it may be necessary or expedient to deal, and to make any and all contracts, agreements, or obligations necessary or expedient and to issue any and all orders which may in any way be found necessary and expedient in connection with the Federal control of systems of transportation, railroads, and inland waterways as fully in all respects as the President is authorized to do, and generally to do and perform all and singular the acts and things and to exercise all and singular the powers and duties which are and by the said act, or any other act in relation to the subject thereof, the President is authorized to do and perform; and

(d) Whereas the said William G. McAdoo has resigned as Director General of Railroads and by a proclamation dated January 1

1919, the President appointed Walker D. Hines Director General of Railroads and authorized him, either personally or through such divisions, agencies, or persons as he may appoint, in his own name or in the name of such divisions, agencies, or persons, or in the name of the President, to agree with the carriers or any of them or with any other person in interest, upon the amount of compensation to be paid pursuant to law, and to sign, seal, and deliver in his own name or in the name of the President or in the name of the United States of America such agreements as may be necessary and expedient with the carriers or other persons in interest respecting compensation, or any other matter concerning which it may be necessary or expedient to deal, and to make any and all contracts, agreements, or obligations necessary or expedient, and to issue any and all orders which may in any way be found necessary and expedient in connection with the Federal control of the systems of transportation taken over by the proclamation of December 26, 1917, as fully in all respects as the President is authorized to do, and generally to do and perform all and singular the acts and things and to exercise all and singular the powers and duties in relation to such Federal control that the President is by law empowered to do and perform; and

(c) Whereas the Interstate Commerce Commission has certified to the President that the amount of the average annual C.R.C. [railway]* operating income of the Company, computed in the manner provided in section 1 of the Federal control act is Seventy-two thousand, eight fifty

C.R.C. hundred [eighty]*-five dollars and fifty-nine cents

A.W. (\$72,8[8]*5.59), subject to such changes and corrections as the Commission may hereafter determine and certify to be requisite in order to correct computations based on the accounts and reports of the Company used by the Commission as the basis of computing said average annual operating income; and

(f) Whereas an agreement has been reached between the Director General and the Company that the Company's properties shall be considered as having come under Federal control for the first time as of the date of June 1, 1918:

Now, Therefore, the parties hereto, each in consideration of the agreements of the other herein contained, do hereby covenant and agree to and with each other as follows:

113 Section 1.—Privy, Alterations, Definitions, etc.

Sec. 1. (a) This agreement shall be binding upon the United States, the Director General and his successors, and upon the Company, its successors, and assigns.

[*Erased in copy.]

This agreement shall not be construed as creating any right, claim, privilege, or benefit against either party hereto in favor of any state or any subdivision thereof, or of any individual or corporation other than the parties hereto.

(b) The provisions of this agreement may be altered, amended, or added to by and only by mutual consent signified by instruments in writing signed by the Director General and by some officer of the Company thereto duly authorized by the Board of Directors of the Company.

(c) Wherever in this agreement the word "Commission" is used it shall be understood as meaning the Interstate Commerce Commission, acting by divisions or otherwise as authorized by law; but either party shall have the right to have the decision of any division reviewed by the Commission sitting as a whole.

(d) Wherever in this agreement the words "Federal control" are used to indicate a period of time, they shall be understood as meaning the period from 12 o'clock midnight of May 31, 1918, to and including the day and hour on which said control shall cease.

(e) Wherever in this agreement the words "test period" are used, they shall be understood as meaning the period between July 1, 1914, and June 30, 1917, both inclusive.

(f) Wherever in this agreement the words "standard return" are used, they shall be understood as meaning the average annual operating income of the Company during the test period ascertained and certified by the Commission.

(g) Wherever in this agreement the words "Director General" are used, they shall be understood as designating the person who has been or may from time to time be appointed by the President to exercise the powers conferred on him by law with relation to Federal control, or such agents or agencies as the Director General may from time to time appoint for the purpose; and wherever by this agreement any notice is to be given by the Director General, the same may be given in his name by any subordinate thereto duly authorized.

(h) Wherever the property of the company is referred to in this agreement it shall be understood as including all the property described in paragraph (a) of section 2 hereof, whether owned by or leased to the Company, and, where the context permits, all additions or betterments thereto made during Federal control; and as to all such leased property the Company shall have the benefit of and be subject to all the obligations and provisions of this agreement and shall be subject to all duties imposed by law in respect of such leased property.

(i) The descriptive words at the heads of the several sections of this agreement and the table of contents are inserted for convenience merely, and are not to be used in the construction of the agreement.

Sec. 2. The Company's refrigerator car line and system of transportation of which the President has taken over possession, use, control, and operation shall be considered as including:

(a) The following properties:

All refrigerator cars, including cars under lease from Missouri River Despatch, and also all other property of the Company, with the appurtenances thereof, used in carrying on its business of furnishing a refrigeration transportation service, the revenues of which were used, or which, if the property had been then owned by or leased to it and had then been revenue bearing, would have been used in computing the Company's standard return. The icing plant at Port Huron, Mich., which was acquired by the Company and put in service in May, 1919, is not included in the property taken over.

The Company reserves to itself the benefit of all leases

C. R. C. (and of all rents and revenues accruing therefrom) of

A. W. parts of its [right of way, station grounds, and other]* property, the revenues from which are properly credit-

able to other accounts than those used in computing its standard return. The Company grants to the Director General all its rights to terminate leases of any part of its property and to occupy and use the premises of any such lessee when, in his judgment, the same is required for operating purposes. The Company shall have for its own benefit the right to lease for industrial sites or other purposes such portion of its lands, or structures thereon, as are not required by the Director General for operating purposes, and to receive and enjoy the rentals therefrom subject to the right of the Director General to cancel any such lease and to occupy the premises or structures whenever, in his judgment, the same are necessary for operating purposes. All expenses connected with any such property heretofore or hereafter leased or otherwise occupied, as in this paragraph provided, including taxes thereon which during the test period were not charged to railway tax accruals, shall be paid by the Company while receiving the revenues therefrom.

(b) All materials and supplies on hand at midnight May 31, 1918.

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Section 3.—Acceptance.

Sec. 3. (c) The Company accepts all the terms and conditions of the Federal control act and any regulation or order made by or through the President under authority of said act or of that portion of the act approved August 29, 1916, referred to in paragraph (a) of the preamble to this agreement which authorizes the President in time of war to take possession, assume control, and utilize systems of transportation; and the Company further and expressly accepts the covenants and obligations of the Director General in this agreement set out and the rights arising thereunder in full adjustment, settlement, satisfaction, and discharge of any and all claims and rights, at law or in equity, which it now has or hereafter can have, otherwise than under this agreement, against the United States, the President, the Director General, or any agent or agency thereof, for compensation under the Constitution and laws of the United States for the taking possession of its property, and for the use, control, and

[*Erased in copy.]

operation thereof during Federal control, and for any and all loss and damage to its business or traffic by reason of the diversion thereof or otherwise which has been or may be caused by said taking or by said possession, use, control, and operation.

No claim is made by the Company for compensation for the period between noon of December 28, 1917, and midnight of May 31, 1918; and the revenues of said period shall belong to the Company, and the expenses thereof shall be paid by the Company, allocated in both cases as provided in paragraph (b) of section 4 hereof.

(b) The Company, on its own initiative or upon the request of the Director General, shall take all appropriate and necessary corporate action to carry out the obligations assumed by it in this agreement or lawfully imposed upon it by or pursuant to the proclamation of December 26, 1917, or by the Federal control act.

(c) The Federal control act being in section 16 thereof expressly declared to be emergency legislation enacted to meet conditions growing out of war, nothing in this agreement shall be construed as expressing or prejudicing the future policy of the Federal Government concerning the ownership, control, or regulation of the Company, or the method or basis of the capitalization thereof, and the recitals or provisions of this agreement shall not be used, as evidence or otherwise, by or against either party hereto in any pending or future proceeding which involves the acquisition or valuation of the Company's property or any part thereof; but nothing in this paragraph shall be taken or construed as affecting the settlement and discharge contained in paragraph (a) of this section, nor as limiting or qualifying any of the provisions of said paragraph for the purposes thereof, nor as limiting the use of this agreement as evidence in any proceeding under this agreement or under the Federal control act.

118 Section 4.—Operation and Accounting During Federal Control.

Sec. 4 (a) All amounts received by the Director General whether received from the Company in cash or collected or realized upon by him from current operating assets belonging to the Company or arising from operations prior to midnight of May 31, 1918, shall be credited by him to the Company; and the Director General shall, to the extent of the cash so received or realized, pay and charge to the Company all expenses arising out of operations prior to June 1, 1918, including reparation claims, and, unless objected to by the Company, may pay and charge to the Company any of such expenses, including reparation claims, in excess of the cash so received or realized. Balances of the above accounts shall be struck quarterly on the last days of March, June, September, and December of each year, and the cash balance found on such adjustments to be due either party shall be then payable and, if not paid, shall bear interest at the rate of 6 per cent per annum, unless the parties shall agree upon a different rate; except that the rate of interest on any portion of a balance found due to the Company which is derived from cash in bank to the credit of such Company on interest shall be adjusted in each case independently of this contract as the parties may agree.

and

C. R. C. (b) Operating expenses, reparation and other claims ^

A. W. hire of equipment shall be allocated with reference to the time when incurred as between the period prior and subsequent to midnight of May 31, 1918, and as between the period of Federal control and the period subsequent thereto. Operating revenues shall be allocated as between the period prior and subsequent to midnight of May 31, 1918, in accordance with the established accrual practices of the Company; except that where prior to midnight of May 31, 1918, the Company's part of a service had been completed, the revenue of the Company for such service shall be allocated to it; but as to classes of traffic where in the opinion of the Director General such allocation will involve undue delay or undue absorption of accounting labor, such revenues shall be allocated in accordance with the established accrual practices of the Company. Like methods of accruing and allocating such revenues shall be used at the end of Federal control.

(c) All expenditures made by the Director General during Federal control for additions and betterments, exclusive of equipment begun prior to June 1, 1918, shall be charged to the Company, and if the completion of any such addition or betterment, is approved or ordered by the Director General, the Company shall be entitled under the provisions of paragraph (d) of section 7 hereof to interest on the cost thereof from the completion of the work; but no interest (except to the extent that the same may be allowed and included in the compensation provided for in paragraph (a) of section 7 hereof) shall be due the Company upon any such expenditures for work done prior to June 1, 1918. Payments for all equipment ordered or under construction by the Company prior to June 1, 1918, but delivered on or after that date, shall also be considered as expenditures made by order or approval of the Director General under paragraph (d) of section 7 hereof. Interest during construction payable under this paragraph, and also interest during construction on the cost of any additions and betterments made by the Company or at its expense to the Company's property during Federal control, shall be included in the cost of the work.

119 (d) Cash receipts or disbursements and other items arising out of transactions which do not enter into or form a part of those used in determining the Company's standard return shall not be received or paid by the Director General unless such transactions are negotiated or conducted by his order for account of the Company and with its consent. When moneys are so received or paid by the Director General in connection with such corporate transactions they shall be credited or charged to the Company. There shall be an accounting of the amounts due by one party or the other under this paragraph at the end of each quarter year of Federal control, and the amount so found due shall be then payable and if not paid shall bear interest as provided in paragraph (a) of this section.

(e) All sums paid by the Director General to maintain pension funds or pension obligations or practices, and all contributions to

Young Men's Christian Associations of employees, employees' saving funds, relief funds or associations, reading rooms, or health, accident, or death benefits for employees, shall be treated as a part of operating expenses during Federal control.

(f) All salaries and expenditures incurred by the Company during Federal control for purposes which relate to the existence and maintenance of the corporation, or to the properties of the Company not taken over by the President, or to negotiations, contracts, valuations, or any business controversy with the Government or any branch thereof, and which are not specially authorized by the Director General, shall be borne by the Company; except that the expenses of valuation now being made by the Commission to the extent that they are, in the opinion of the Director General, necessary to comply with the valuation orders and other requirements of the Commission and to the co-operation of the Company in the making of such valuation, shall be paid by the Director General as a part of operating expenses. If the Company is dissatisfied with the ruling of the Director General it may appeal to the Commission, whose decision shall be final.

(g) The Director General shall furnish for additions and betterments to the Company's property approved or ordered by him any of the materials and supplies taken over under paragraph (b) of section 2 hereof, or purchased by him and held for use in connection with the Company's property, in so far as in his judgment, he can do so with due regard to his own requirements. Materials and supplies so furnished shall be charged to the Company at cost.

(h) The Director General shall at his option be substituted for the period of Federal control in the place of the Company in respect of the benefits and obligations of contracts relating to operation in force June 1, 1918 (including contracts made by subsidiaries for the use and benefit of the Company and the right to abrogate or change and make new contracts with express companies for the period of Federal control), except as to contracts between the Company and subsidiary companies which shall be considered and treated as arrangements or practices; and the Director General shall in like manner at his option be substituted for such period in respect of the benefits and obligations of arrangements and practices in force during the test period in regard to fuel, materials, and supplies for the operation of the property described in paragraph (a) of section 2 hereof and thereto

of any additions and betterments [^] obtained from any C. R. C. mine, oil field, or other source of supply owned or controlled by the Company, it being understood that under A. W. such arrangements or practices, if availed of by the Director General, he shall, to the extent necessary to offset any increase in the standard return growing out of the furnishing by the Company or of its subsidiaries during the test period, of fuel, materials, and supplies under an arrangement or practice at less than the then cost or the then market value thereof for refrigerator car line purposes, be charged for such fuel, materials, and supplies a price expressed in dollars or cents per unit below or above the then cost or the then

market value thereof for refrigerator car line purposes (as the practice of the Company may have been) in the same amount that the prices charged the Company during the test period were below 120 or above the then cost or the then market value thereof for refrigerator car line purposes; and at the request of the Director General or the Company the prices for fuel or materials supplied between May 31, 1918, and the execution of this contract shall be adjusted on the foregoing basis: *Provided, however*, That a source of supply which the Company had acquired to safeguard its own operations shall not be depleted or reduced for use on other transportation systems, except in cases of emergency to be determined by the Director General, in which event the quantity so used on other transportation systems shall be accounted for to the Company at the fair value thereof: *And provided further*, That materials and supplies secured under contracts which the Company had made for its own operations shall, so far as practicable, be used on the Company's property; and that, if used on any other transportation system, materials and supplies of like character shall be furnished by the Director General for use in making such additions and betterments as shall be chargeable to the Company, and shall be charged at cost under such contracts.

(i) The Director General shall pay, or save the Company harmless from, all expenses incident to or growing out of the possession, operation, and use of the property taken over during Federal control, except the expenses which under this agreement are to be borne by the Company. He shall also pay or save the Company harmless from all rents called in the monthly reports to the Commission equipment rents and all judgments or decrees that may be recovered or issued against, and all fines and penalties that may be imposed upon, the Company by reason of any cause of action arising out of Federal control, or of anything done or omitted in the possession, operation, use or control of the Company's property during Federal control, except judgments or decrees founded on obligations of the Company to the Director General or the United States.

(j) Except as otherwise provided in this agreement, the Director General shall save the company harmless from any and all liability, loss, or expense resulting from or incident to any claim made against the Company growing out of anything done or omitted during Federal control in connection with, or incident to, operation or existing contracts relating to operation, and shall do and perform, so far as is requisite under Federal control for the protection of the Company, all and singular the things, of which he may have notice, necessary and appropriate to prevent, because of Federal control or of anything done or omitted thereunder, the forfeiture or loss by the Company of any of its property rights. The Director General shall also save the Company harmless from any and all claims for breach of covenant heretofore entered into by the Company or by any predecessor in title or interest in any mortgage or other instrument in respect to insurance against losses by fire.

Nothing in this or in the preceding paragraph shall be construed to be an assumption by the Director General of, or to make him

liable on, any obligation of the Company to pay a debt secured by mortgage or any rent under a lease, except such classes of rents, any, as, in computing the Company's standard return, were classified by the Commission as equipment rents or operating expenses, or make the Director General liable to the Company in respect of an interest on any bonds issued by, or in respect of any obligations of other corporations, or in respect of contributions to make up deficiencies in the earnings of other corporations, except as payments in respect of such interest or other amounts were classified under said rules and

- C. R. C. equipment \wedge or were a class of payments to be otherwise
- A. W. reflected in operating income.

The Company shall, during Federal control, pay the rents of any property, held by it under lease or contract, described in paragraph (a) of section 2 hereof, except the rents which in ascertaining and certifying the Company's standard return were classified as equipment rents or as operating expenses; which excepted rents shall be paid by the Director General. If the lease of or right to use, any property described in paragraph (a) of said section 2 expire during Federal control, the Company shall, if possible, and if requested by the Director General, renew the same; the rental, however, of property in the excepted classes above mentioned shall be paid by the Director General. The Company shall pay the same amount of rent as was payable at the beginning of Federal Control for other Property, the lease of or right to use which is renewed at the request of the Director General, but any increase in the rental of such other property shall be paid by the Director General.

(k) In carrying out the provisions of paragraphs (a), (b), (c), and (d) of this section and the provisions of section 6 hereof the Director General shall not settle any claim by or against the Company against the objection in writing of the president or of any other duly authorized officer of the Company. The conduct of all litigation before any court or commission arising out of such disputed claims, or out of operation prior to Federal control, shall be in charge of the Director General's legal force and the expense thereof shall be paid by the Director General; but the Company may, at its own expense, employ special counsel in connection with any such litigation.

(l) Nothing in this agreement shall be construed as inconsistent with the provision in section 10 of the Federal control act that no process, mesne or final, shall be levied against any property under Federal control, nor as a waiver by the United States, of any claim that might otherwise be made by it that the rights of any State or subdivision thereof or of any individual or corporation have been abrogated or suspended by the taking over of the Company's property or by Federal control.

(m) The Company shall have the right at all reasonable times to inspect the books and accounts kept by the Director General relating to the property of the Company, or to the operation thereof, and the Director General shall during Federal control furnish the Company

with a copy of the operating reports relating to its property, and as soon as practicable after the end of each fiscal year shall furnish to the Company a complete list of its equipment as of the end of such fiscal year.

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Section 5.—Upkeep.

Sec. 5. (a) During the period of Federal control the Director

General shall, except as otherwise modified by paragraph

C. R. C. (i) hereof, annually, as nearly as practicable, expend

A. W. and charge to [railway]* operating expenses, either in payments for labor and materials or by payments into

funds, such sums for the maintenance, repair, renewal, retirement, and depreciation of the property described in paragraph (a) of section 2 hereof as may be requisite in order that such property may be returned to the company at the end of Federal control in substantially as good repair and in substantially as complete equipment as it was on June 1, 1918; *Provided, however,* That the annual expenditure and charges for such purposes during the period of Federal control on such property and the fair distribution thereof over the same, or the payment into funds, of an amount equal in the aggregate (subject to the adjustments provided in paragraph (c) and to the provisions of paragraph (c) of this section) to the average annual expenditure and charges for such purposes included in operating expenses during the test period, as classified by the Commission in ascertaining and certifying the Company's standard return, less the cost of fire insurance included therein, shall be taken as a full compliance with the foregoing covenant.

(b) The Director General may expend such sums, if any, in addition to those expended and charged under paragraph (a) of this section (subject to the adjustments provided in paragraph (c) of this section) as may be requisite for the safe operation of the property described in paragraph (a) of section 2 hereof, assuming a use similar to the use during the test period and not substantially enhancing the cost of maintenance over the normal standard of maintenance of properties of like character and business during said period; and the amount, if any, of such excess expenditures during Federal control shall be made good by the Company as provided in paragraph (b) of section 7 hereof, but material changes in the types, character or construction of the cars referred to in paragraph (a) of Section 2 hereof, shall not be made without the consent of the Company.

(c) In comparing the amounts expended and charged under the provisions of paragraphs (a) and (b) of this section with the amounts expended and charged during the test period, due allowance shall be made for any difference that may exist between the cost of labor and materials and between the amount of property taken over and the average for the test period, and, as to paragraph (a), for any difference in use between that of the test period and during Federal control which in the opinion of the Commission is substantial enough to be considered, so that the result shall be as nearly as practicable,

[*Erased in copy.]

the same relative amount, character, and durability of physical reparation.

(d) At the request of either party there shall be an accounting of the amounts due by one party or the other under paragraphs (a) and (b) of this section at the end of each year of Federal control and at the end of Federal control.

(e) If during Federal control any of the property described in paragraph (a) of section 2 hereof or any replacement thereof or addition thereto or betterment thereof is destroyed or damaged otherwise than by fire or public enemies, and is not restored or replaced by the Director General, he shall reimburse the Company the value of the property destroyed or the amount of the damage at the time of the loss, and the cost of restoration or replacement, or said value or damage, as the case may be, shall be charged to annual operating expenses; it being understood that extraordinary losses caused by floods, explosions, train wrecks, or accident are included in the matters covered by this paragraph, while ordinary losses due to such causes are included in the matters covered by paragraph (a) of this section: *Provided, however,* That if the Commission, on application of either party and after giving due consideration to the practice of the Company during the test period in respect to such matters and to 123 any other pertinent facts and circumstances, determines that it is just and reasonable that the said cost or value shall be apportioned or extended over a period of more than one year, this shall be done, and so much of said cost or value as may be apportioned by the Commission over the period subsequent to Federal control, shall be charged to the Company in the final accounting at the end of Federal control and shall be paid by it.

If, during Federal control, any of the property described in paragraph (a) of section 2 hereof or any replacement thereof thereof

C. R. C.

A. W.

or addition thereto or betterment [^] is destroyed or damaged by fire, and is not restored or replaced by the Director General, he shall reimburse the Company the value of the property destroyed or the amount of the damage at the time of the fire; and the cost of restoration or replacement or said value or damage, as the case may be, shall be charged to annual operating expenses, but the same shall not be considered a charge to such expenses for the purposes specified in paragraph (a) of this section.

In case of any such loss or damage by fire, the Director General shall, if given written notice of the requirements of any mortgage, equipment lease, or trust on the property so destroyed or damaged, make such restoration or replacement, or pay such value or damage, in such way as to meet the requirements of such mortgage, equipment lease, or trust in the same manner as would have been proper in applying the proceeds of insurance on such property if it had been insured by the Company against loss or damage by fire in accordance with the terms of such instruments of lien; and a compliance with the written request of the Company in respect thereof shall be a full acquittance of any obligation of the Director General in the premises.

The foregoing parts of this paragraph are subject to the proviso

that in case of loss or damage any additions or betterments as defined by the Commission in its classification of "road and equipment" of steam roads, made in connection with or as a part of the restoration or replacement of property damaged or destroyed shall be charged to and paid by the Company.

The Director General shall not be liable to the Company for any loss or damage due to the acts of public enemies.

(f) If any additions or betterments are made to the property taken over or any equipment is added at the expense of the Company and with the approval or by order of the Director General during Federal control, he shall expend and charge to operating expenses such sums either in payments for labor and materials or by payments into funds, as may be requisite for the proper maintenance, repair, renewal, retirement, and depreciation of such property until the end of Federal control.

(g) The Company shall have the right to inspect its property at all reasonable times during Federal control, and the Director General shall provide reasonable facilities for such inspection.

(h) If any question shall arise, either during or at the end of Federal control, as to whether the covenants or provisions in this section contained are being or have been observed, the matter in dispute shall, on the application of either party, be referred to the Commission which, after hearing, shall make such findings and order as justice and right may require, which shall be final as to the questions submitted and shall be binding on and observed by both parties hereto, except that either party may take any question of law to the courts, if he or it so desires.

(i) During the period of Federal control the Director General shall make no charge to or be liable for depreciation on account of the equipment under lease from Missouri River Despatch, inasmuch as there is included in the equipment rents for such property a charge for the depreciation thereof.

Sec. 6. (a) All taxes assessed under Federal or any other governmental authority for the period prior to June 1, 1918, including a proportionate part of any such tax assessed after May 31, 1918, for a period which includes any part of 1918 prior to June 1 or preceding years, and unpaid on that date, all taxes commonly called war taxes which have been or may be assessed against the Company under the act of Congress entitled "An act to provide revenue to defray war expenses and for other purposes," approved October 3, 1917, or under any act in addition thereto or in amendment thereof, and all taxes which have been or may be assessed on property under construction, and all assessments which have been or may be made for public improvements, as defined by the Commission in its classification of "road and equipment" of steam roads, shall be paid by the Company; but upon the amount chargeable to investment interest shall be paid to the Company during Federal control at the rate provided in paragraph (d) of section 7 hereof. Taxes assessed during con-

struction on additions, and betterments made by the Company with the approval or by order of the Director General during Federal control, shall be considered a part of the cost of such additions and betterments, and shall, under the provisions of paragraph (d) of section 7 hereof, bear interest as a part of such cost from the date of the completion of such additions and betterments. Assessments for public improvements which do not become a part of the property taken over shall bear interest from the date of the payment of such assessment.

(b) If any tax or assessment which under this agreement is to be paid by the Company is not paid by it when due, the same may be paid by the Director General and deducted from the next installment of compensation due under section 7 hereof. If any taxes properly chargeable to the Director General have been or shall be paid by the Company, it shall be duly reimbursed therefor.

(c) The Director General shall either pay out of revenues derived from operation during the period of Federal control or shall save the Company harmless from all taxes lawfully assessed under Federal or any other governmental authority for any part of said period on the property under such control, or on the right to operate as a car line, or on the revenues derived from operation, and all other taxes which under the accounting rules of the Commission in force December 31, 1917, applicable to steam roads are properly chargeable to "railway tax accruals," except the taxes and assessments for which provision is made in paragraph (a) of this section. The Director General shall pay or save the Company harmless from the expense of all suits respecting the classes of taxes payable by him under this agreement.

(d) If any such tax is for a period which began before June 1, 1918, or continues beyond the period of Federal control, such portion of such tax as may be apportionable to the period of Federal control shall be paid by the Director General, and the remainder shall be paid by the Company.

(e) Whenever a period for which a tax is assessed can not be definitely determined, so much of such tax as is payable in any calendar year shall be treated as assessed for such year.

125

Section 7.—Compensation.

Sec. 7. (a) The annual compensation guaranteed to the Company under section 1 of the Federal control act shall be the sum of Seventy-

fifty

C. R. E. two thousand, eight hundred [eighty]*-five dollars and

5

A. W. fifty-nine cents (\$72,8[8]*5.59), during each year and pro rata for each fractional part of a year of Federal control, subject, however to any increase or decrease in the standard return hereafter made by the Commission as provided in paragraph (e) of the preamble of this agreement.

[*Erased in copy.]

(b) The said compensation shall be paid to the Company quarterly in equal installments on the last days of March, June, September, and December of each year for the quarter ending therewith, except that the first seven installments shall be due as of June 30, 1918, September 30, 1918, December 31, 1918, March 31, 1919, June 30, 1919, September 30, 1919, and December 31, 1919, respectively, but shall be paid upon the execution of this agreement; but from each installment there may be deducted any amount then due by the Company under paragraphs (a) and (d) of section 4 hereof, under paragraph (b) of section 5 hereof, and under paragraph (b) of section 6 hereof, and all amounts required to reimburse the United States for the cost of additions and betterments made to the property of the Company not justly chargeable to the United States unless such matters are financed or otherwise taken care of by the Company to the satisfaction of the Director General, and the Director General may apportion any such amounts to two or more subsequent installments: *Provided, however,* That said power to deduct amounts due or accruing under paragraph (b) of section 5 hereof and the cost of additions and betterments not justly chargeable to the United States shall not be so exercised as to prevent the Company from paying out the sums reasonably required to support its corporate organization, to keep up sinking funds for the Company's debts required by contracts in force May 31, 1918, to pay its taxes, to pay rents and other amounts (not chargeable to capital account) properly payable by the Company for leased properties, to pay interest which has heretofore been regularly paid by the Company, and interest on loans issued during Federal control and approved by the Director General, nor shall such deduction be made in respect of additions and betterments which are for war purposes and not for the normal development of the Company, nor in respect of amounts due under paragraph (a) and (d) of section 4 hereof, in cases where the current assets, including materials and supplies, of the Company taken over by the Director General under the provisions of this agreement nearly exceed the current liabilities of the Company paid or assumed by the Director General under said section. In the event of a difference as to the fact whether additions and betterments are for war purposes and not for the normal development of the Company, the question may, on application of either party, be referred to and determined by the Commission.

The power provided in this paragraph to deduct the amount due by the Company for the cost of additions and betterments not justly chargeable to the United States is further declared to be an emergency power, to be used by the Director General only when he finds that no other reasonable means is provided by the Company to reimburse the United States, and, as contemplated by the President's proclamation and by the Federal control act, it will be the policy of the Director General to so use such power of deduction as not to interrupt unnecessarily the regular payment of dividends as made by the company during the test period.

Overdue installments of compensation, or balances thereof, provided for in this section shall bear interest from maturity at the rate

of five per cent per annum, except that if the Director General shall, prior to the execution of this contract, have loaned the Company any money, then to the extent of the amount thus loaned, the installments of compensation overdue at the date of the execution hereof shall bear interest from maturity at the same rate as that charged to the Company on such loans.

126 (c) During Federal control the Company shall not, without the prior approval of the Director General, issue any bonds, notes, equipment trust certificates, stock, or other securities, or enter into any contracts (except contracts in respect of corporate affairs and property not taken under Federal control), or agree to pay interest on its debt at a higher rate, or for rent of leased properties a larger amount, than the rates and amounts payable as of, or required by contracts in force on May 31, 1918. The Company may, however, procure the authentication and delivery to it under any mortgage or trust deed or agreement in force May 31, 1918, of bonds or notes issuable thereunder in respect of additions, betterments, and equipment, or for refunding purposes.

(d) Upon the cost of additions and betterments, less retirements in connection therewith, made to the property of the Company during Federal control, the Director General shall, from the completion of the work, pay the Company a reasonable rate of interest, to be fixed by him on each occasion. In fixing such rate or rates he may take into account not merely the value of money but all pertinent facts and circumstances, whether the money used was derived from loans or otherwise, provided that to the extent that the money is advanced by the Director General or is obtained by the Company from loans or from the proceeds of securities the rate or rates shall be the same as that charged by the Director General for loans to the Company or to other companies of similar credit.

(e) From its compensation so received or from other income, if adequate for the purpose, the Company shall make all payments of interest, rents (other than the equipment rents, and rents classified as operating expenses, mentioned in paragraph (j) of section 4 hereof), and other sums necessary to prevent a default under any mortgage or lease of any of the property described in paragraph (a) of section 2 hereof; and if at any time during Federal control the Company, by virtue of any change in the right of possession (subject to the rights of the United States) to any of said property or otherwise, shall no longer be entitled as between itself and any other person or corporation to receive the entire compensation herein provided, such compensation shall be apportioned and paid, as between the parties entitled thereto, as justice and right may require.

127 Section 8.—Claims for Losses on Additions, etc.

Sec. 8. (a) Prompt notice in writing, except as provided in paragraph (d) of this section, shall be given the Company of the making or ordering of any additions or betterments, including cars, or other equipment to or for the property of the Company costing more than one thousand dollars, with an estimate of the cost thereof. Such

notice shall be given before the beginning of the work or the acquisition of the property whenever in the judgment of the Director General it is practicable to do so. Within a reasonable time after the completion of the work or the acquisition of the property, a written statement of the final cost thereof shall be given the Company. There shall be furnished the Company, as soon as practicable after the end of each month, a written statement of all expenditures for additions and betterments estimated to cost one thousand dollars or less made during the month, with a brief description of the work done or of the property acquired; and such statement shall constitute all the notice of additions and betterments costing one thousand dollars or less required by paragraphs (b) and (c) of this section. The notices provided in this paragraph may be given to the president of the Company unless the Company designates some other officer to receive the same, in which event the notice shall be given to such other officer.

(b) Any claim of the Company for loss accruing to it by reason of expenditures for additions and betterments as defined by the Commission in its classification of "road and equipment" of steam roads, made to the property of the Company during Federal control in connection with or as a part of the work of maintaining, repairing, and renewing the Company's property, except such expenditures as are incurred in connection with the replacement of buildings and structures in new locations, may be determined by agreement between the Director General and the Company, or, failing such agreement as to the fact or amount of such loss, the questions at issue may, upon the application of either party at any time after the filing of the statement of claim hereinafter referred to, be ascertained in the manner provided in section 3 of the Federal control act: *Provided, however,* That no loss shall be claimed by the Company and no money shall be due to it in respect of such additions and betterments upon the ground that the actual cost thereof at the time of construction was greater than under other market and commercial conditions; and for the purpose of determining such controversy the amount paid for any addition or betterment shall be deemed the fair and reasonable cost thereof and shall be taken as the basis for such determination; nor unless the Company, within sixty days of notice to it that the work will be done, shall give the Director General notice of objection thereto and shall file with the Director General a statement of its claim within ninety days after notice of the completion of the work.

(c) Any claim of the Company for loss accruing to it by reason of any additions and betterments which are not made in connection with or as a part of the work of maintaining, repairing, and renewing the Company's property, or accruing to it in connection with maintenance in the replacement of buildings and structures in new locations, or by reason of cars, or other equipment provided for the Company during Federal control, may be determined by agreement between the Director General and the Company, or failing such agreement as to the fact or amount of such loss, may, by proceedings instituted not later than six months after the end of Federal con-

trol, be ascertained in the manner provided in section 3 of the Federal control act: *Provided, however*, That no loss shall be claimed by the Company and no money shall be due to it in respect of such additions, betterments, cars, or other equipment mentioned in this paragraph upon the ground that the actual cost thereof at the time of construction or acquisition was greater than under other market and commercial conditions; and for the purpose of determining such controversy the amount paid for any additions, betterments,

cars, or other equipment shall be deemed the fair and reasonable cost thereof and shall be taken as the basis for such determination; nor unless within sixty days after notice to the Company of such construction or acquisition written notice is given to the Director General by the Company that it will claim a loss in respect thereof. With and as a part of such notice the Company shall state its objections to such construction or acquisition as far as reasonably practicable at the time. Nothing in this agreement shall be construed as barring the United States from contending that no loss within the meaning of the Federal control act accrued to the Company by reason of any additions or betterments, made during Federal control by order or approval of the Director General, if it is made to appear that the Company itself but for Federal control should in the exercise of sound judgment have made such additions or betterments.

(d) Where additions, betterments, cars, or other equipment have been made to or provided for the property of the Company during Federal control but prior to the execution of this agreement, the Director General shall not be required to give the notice thereof provided for in paragraph (a) of this section and notice by the Company of any claim of loss in respect thereto may be given the Director General within ninety days after the execution hereof; and such claims shall thereafter be proceeded with in the manner provided in paragraph (b) or paragraph (c) of this section, as the case may be.

(e) The Director General shall reimburse the Company for the amount of loss ascertained under this section with a proper adjustment of interest thereon.

(f) The Director General shall not acquire any cars, or other equipment at the expense, or on the credit, of the Company in excess of what in his judgment is necessary, in addition to its then existing equipment, to provide for the traffic requirements of its own system of transportation; but this provision shall not prevent the Director General, after the acquisition of such equipment, from using the same, or any part thereof, on the line of any other transportation system operated by him.

Sec. 9. (a) At the end of Federal control all the property described in paragraph (a) of section 2 hereof shall be returned to the Company, together with all repairs, renewals, additions, betterments and replacements thereto which have been made during Federal

control, except as any part thereof may have been destroyed or retired and not replaced, in which case the provisions of section 5 hereof shall govern and except that the Director general shall not be obliged to restore or replace property destroyed or damaged by the acts of public enemies.

(b) At the end of Federal control the Director General shall return to the Company all uncollected accounts received by him from the Company and also materials and supplies equal in quantity, quality, and relative usefulness to that of the materials and supplies which he received and to the extent that the Director General does not return such materials and supplies he shall account for the same at prices prevailing at the end of Federal control. To the extent that the Company receives materials and supplies in excess of those delivered by it to the Director General it shall account for the same at the prices prevailing at the end of Federal control, and the balance shall be adjusted in cash.

(c) At the end of Federal control the Director General may turn over to the Company all assets which have accrued out of operation; and the Company shall, to the extent of the cash received or realized from such assets, pay and charge to the Director General all expenses arising out of operations during Federal control, including reparation and other claims, and may, unless objection is made by the Director General, pay and charge to him any such expenses, including reparation and other claims in excess of the cash so received or realized. On the first day of the third month following the termination of Federal control an accounting between the parties shall be had, and so on the first of each third month thereafter. Any balance found due either party shall be payable as of the date on which the account is stated and shall bear interest until paid.

(d) At the end of Federal control there shall be paid to the Company any balance then remaining unpaid of the cash received from the Company at the beginning of or during Federal control, together with any unpaid interest which may have accrued upon the same. There shall also be paid to the Company any funds created under the provisions of this agreement, except to the extent that such funds may have been properly used under this agreement.

(e) Wherever under any provision of this section there is to be an adjustment of interest it shall be at the rate of five per cent per annum unless the parties shall in any case agree on a different rate.

(f) After Federal control no claim by or against the Director General shall be settled by the Company against the written objection of the Director General or the Attorney General of the United States. The conduct of all litigation before any court or commission arising out of such disputed claims or out of operations during Federal control shall be in charge of the Company's legal force and the expense thereof shall be paid by the Company; but the Director General or the Attorney General may, at the expense of the United States, employ special counsel in connection with any such litigation.

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Execution.

In witness whereof, these presents have as of the day and year first above written been duly signed, sealed and delivered by *Walker D. Hines*, Director General of Railroads, and duly signed, sealed, and delivered by the *Chicago, New York and Boston Refrigerator Company*, by its President, attested by its Secretary with its corporate seal hereto affixed; such execution and delivery on the part of the Company having been duly authorized and directed by a vote of its Board of Directors at a meeting duly convened and held on the 12th day of March, 1920, and such action on the part of the Board of Directors having been duly authorized by vote of the stockholders of the Company at a meeting duly convened and held on the 12th day of March, 1920, certificates of which meetings, duly attested by the Company's Secretary, have been lodged with the Director General.

[SEAL.]

WALKER D. HINES,

Director General of Railroads.

E. U. M.

[SEAL.]

CHICAGO, NEW YORK AND BOSTON
REFRIGERATOR COMPANY.

By C. R. COOPER,

President.

Attest:

GEO. H. COURTERMANCHE,

Secretary.

131

May 15, 1920.

The Director General of Railroads,
Washington, D. C.

SIR:

The agreement between the Director General of Railroads and the Chicago, New York and Boston Refrigerator Company, relating to compensation and other matters, dated March 12, 1920, is delivered by the Director General to the Company and received by the Company upon the understanding:

(1) That by proclamation dated December 24, 1919, the President acting under the Federal Control Act and all other powers him thereto enabling relinquished from Federal control, effective the first day of March, 1920, at 12:01 o'clock A. M., all railroads, systems of transportation, and property of whatever kind taken or held under Federal control, and not theretofore relinquished; and by virtue of said proclamation and by the provisions of the Act of Congress approved February 28, 1920, hereinafter called the Transportation Act, 1920, federal control terminated on said first day of March 1920, at 12:01 o'clock A. M.,

(2) That by proclamation dated February 28, 1920 made after the approval of the Transportation Act, 1920, the President author

ized and directed Walker D. Hines, Director General of Railroads or his successor in office, either personally or through such divisions, agencies or persons as he may appoint, to exercise and perform all and singular the powers and duties conferred or imposed upon the President by the Transportation Act 1920 (except the designation of an Agent under Section 206 of said Act), and to do and perform as fully in all respects as the President is authorized to do all and singular the acts and things necessary and proper in order to carry into effect the provisions of the said proclamation of December 24, 1919, and of the Transportation Act 1920, and the unrepealed provisions of the Federal Control Act;

(3) That the Agreement conforms to the standard form of contract which after negotiation with the representatives of the railroad companies was adopted and promulgated by the Director General of Railroads;

132 (4) That all the terms and conditions of the Agreement were fully agreed upon prior to the termination of Federal control; and the agreement was executed subsequent to such termination; and that such execution by the Company was in pursuance of resolutions adopted by the Company's Board of Directors and by its stockholders;

(5) That, subject to the Transportation Act, 1920, the agreement shall be understood and interpreted in all respects and shall have the same effect as if executed during Federal control;

pany, and attested by its Secretary, with its corporate seal affixed,

(6) That this letter, when signed by the President of the Company, shall be annexed to and made a part of the said Agreement dated March 12, 1920.

Yours very truly,

CHICAGO, NEW YORK AND BOSTON
REFRIGERATOR COMPANY,
By C. R. COOPER,
President.

Attest:

[SEAL.] GEO. H. COURTERMANCHE,
Secretary.

133 Our property was turned back to us on March 1, 1920, and we operated it from that time to September 1, 1920. Between June 1, 1918 and March 1, 1920, our business was handled by the United States Railroad Administration and taken out of our hands completely. During this time they cut off all division in revenue. When it was known that Federal Control was to end and the property was to be returned to us we made efforts to reinstate the arrangements regarding our compensation which obtained prior to Federal Control. We tried to do this with the Grand Trunk, The Lehigh Valley and the Delaware, Lackawanna and Western. I tried this personally and by letter but failed to accomplish anything and could not reinstate the division of revenue.

There was now produced and offered in evidence as "Plaintiff's Exhibit 15" a certified copy of the acceptance by petitioner of the provisions of section 209 of the Transportation Act 1920 being the same certified copy marked "Relator's exhibit 1" attached to the original petition on file herein and for that reason not here set forth at length.

The operation of the Company for the six months period ended September 1, 1920, resulted in a loss.

There was now produced and offered in evidence as "Plaintiff's Exhibit 16" a certified copy of a report and order of the defendant Commission which is the same certified copy marked "Relator's Exhibit 3" attached to the original petition on file herein and for that reason not here set forth at length.

There was now produced and offered in evidence as "Plaintiff's Exhibit 17" a certified copy of the application of petitioner for payment under section 209 Transportation Act 1920, which is the same certified copy marked "Relator's exhibit 4" attached to the original petition on file herein and for that reason not here set forth at length.

134 There was now produced and offered in evidence as "Plaintiff's Exhibit 18" a certified copy of a report and order of the defendant Commission which is the same certified copy marked "Relator's Exhibit 5" attached to the original petition on file herein and for that reason not here set forth at length.

The paper now shown me is a copy of the articles of incorporation of the petitioner. This paper was now offered in evidence as "Plaintiff's Exhibit 19" the relevant portion thereof being as follows: "The purposes of said corporation are to manufacture, build, repair, buy, own, or hire, lease, sell or rent for hire, cars of all description, both freight and passenger, engine and other rolling stock used and employed in the operation of railroads; to manufacture and deal in any articles fabricated of wood, iron or other metals; to purchase, lease or otherwise acquire, use and sell and otherwise dispose of any and all patents, patent rights, processes and inventions, and interests therein and rights thereunder, as may be deemed essential or convenient in carrying on the business of the corporation, with power to authorize and license other persons or corporations to manufacture, sell, use, enjoy and operate thereunder; to purchase, lease and otherwise acquire, manage, use, deal in and sell and otherwise dispose of any and all real and personal estate and plant and other property and things whatsoever, including stocks, bonds and other securities of similar corporations, deemed necessary or convenient for the prosecution of and in carrying on the business of the corporation and in doing any and all acts and things incidental to or connected with said business; and to have and to exercise all the rights, powers and privileges appertaining to corporations under the general laws of the state of Maine."

We employed an auditor and he made out reports of the opera

tions of the company during the guaranty period which were filed with the Commission.

135 All of the capital stock of the Company, except officers and directors' shares is owned by the Grand Trunk Railway Company of Canada.

Less than carload shipments that move out of Chicago are iced before moving. We arrange for this icing, pay the cost thereof, and prorate the same against the roads. We pay our proportion of the cost of icing carload shipments, in excess of the tariff charge therefor.

Upon cross examination the witness said:

We own no motive power, tracks, terminals, unloading stations or railroad property of any kind except cars. We receive mileage, at the rate of two cents per mile, from the railroads over whose lines our cars run as compensation for the use of the cars by the railroad companies. In addition, we receive from lines with which we have contracts, other revenue in the form of commissions paid to us as compensation for soliciting freight. The Refrigerator Company has no contracts with the lines west of Chicago, and some but relatively few of its shipments are delivered in the east by railroad companies with which it has no contracts. The only compensation received by the Refrigerator Company from these non-contracting railroads is the car rental or mileage referred to above. The company's revenue is about equally divided between mileage and commissions, and this was true during the test period. The Grand Trunk Railway Company of Canada paid about fifty per cent of the total commissions for transportation over its Canadian lines. The route over which petitioner's cars move east from Chicago includes the line of the Grand Trunk Railway Company of Canada, within Canada, from Port Huron to Buffalo. The Grand Trunk Railway Company filed an acceptance and made an application for guaranty under section 209 but I cannot say about its Canadian lines. I do not know

136 about them. During Federal Control Commissions were done away with. Prepaid freight charges collected by petitioner were turned over to railroad companies without deduction. Sometimes we have had to stand part of loss and damage claims. There was such a case just a few days ago. The Company files no tariffs with the Commission. It collects charges in accordance with the tariffs of railroad companies. The company files no annual statistical reports with the Commission as provided for by section 20 of the Act to Regulate Commerce. Our accounts are not kept according to any system prescribed by the Commission. We have a contract with Boyle Ice Company in Chicago to ice cars at cold storage or on team tracks whenever we request them to do so. The roads in the end pay the cost of icing except where the shipper pays. We furnish cars for the shipper to load, trace his shipments through, notify him of deliveries and keep him posted. All these services are covered by the rate published by the railroad company. The shipper

pays only the freight charges shown in the tariffs filed by the Railroad Companies which move the cars. We load cars for the people on South Water Street and charge them with the cost of loading. This is merely a stevedoring service and not a transportation service. Our compensation is based on the tonnage carried and we bill each month sending a statement of account. When we extended credit to the shippers at Chicago, it was with the approval of the local treasurer of the Grand Trunk Railway Company.

The trade names "National Despatch" and "New York Despatch" indicate, in the minds of the shippers, routing east of Chicago, via the Grand Trunk and the other railroads which have contracts with petitioners.

During the guaranty period we did not receive any commission from any railroads; our staff had been largely disbanded and
137 was not reorganized until October 1920. We did not solicit much business; we made no effort comparable to our ordinary effort to solicit freight.

When I spoke of a division of revenue between petitioner and railroad companies on direct examination I meant the commission which we receive for soliciting freight. We received no other division.

(Witness recalled.)

After 1897 we started out with a plan to specialize on dairy traffic. We educated all of our men in the field and made a study of the business. We sent our men down East to become familiar with the business of the receivers, find out just what they needed and required in the market, how the business was done there, so that when they met with the shipper in the country they were well informed. They gave them the knowledge of the business which they required. These agents conferred with the shipper as to the best method and practice of shipping, packing and caring for the shipment. We were in competition with other refrigerator lines and considered it a trade advantage to keep in close touch with our shippers, and did so. Since we adopted this practice in 1897 our tonnage has more than doubled. We operated under the trade names of "New York Despatch Refrigerator Line" and "National Despatch Refrigerator Line." The trade name "New York Despatch Refrigerator Line" has, in my opinion, a value greater than all the rest of the Company put together. This is because of the general relation between the shippers and the Company and because of the Company's method of doing business. Every shipper in the West and every receiver in the East knows it. Our practice is to accept everything in the line of dairy products that is tendered to us where we advertise that we will take care of them. So far as butter, eggs and other dairy products are concerned, our service is open to the public generally without limitation and
138 between individuals or individual shippers. We own our cars and at our different agencies own the furniture and fixtures. Our cars are repaired for us under a contract.

139 Thereupon GEORGE W. GREENE was called as a witness for the petitioner and testified as follows:

I am chief clerk of the petitioner, and from September 10, 1912, down to the present time, I have had full charge of the investigation, adjustment and payment of loss and damage and overcharge claims. I have recently made an investigation as to the amount and number of those claims that were paid in different years and the paper shown to me is a correct statement of the number and amount of such claims for 1913, 1914, 1915, 1916 and 1917. The petitioner investigated, adjusted and paid these claims, and afterwards they were prorated among the different carriers. If the negligence was that of the petitioner there was no prorating.

On cross-examination witness stated:

In all the years from 1913 to date, covered by the exhibit, there was no instance I can remember where the refrigerator company bore any part of any loss and damage claim. The claims were ultimately paid by the railroad companies. There might have been one or two claims shown in the exhibits where the petitioner had to pay all of it on account of some negligence, but I do not remember any. I only remember one, and that was since the time shown in the exhibits.

The statement referred to was offered in evidence as "Plaintiff's Exhibit 20" and is as follows:

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PLAINTIFF'S EX. 20.

Ratio Loss and Damage to Revenue.

	Amount paid.	Proportion to revenue.	
Eggs	\$40,836.20	9.6%	} 1913
Butter	1,570.00	-9.7%	
Poultry	4,422.41		
Eggs	52,483.15	4.5%	} 1914
Poultry	4,826.82	1.3%	
Butter	10,673.39		
Eggs	37,191.25	7.4%	} 1915
Poultry	6,192.74	2.1%	
Butter	9,635.22	2. %	
Eggs	26,426.51	4.7%	} 1916
Poultry	5,877.52	2.5%	
Butter	7,279.15	1.1%	
Eggs	18,858.15	3.9%	} 1917
Poultry	6,318.74	3. %	
Butter	6,485.36	2. %	
Cheese	310.18	1.3%	
Milk	36.15	2.3%	

Number of Claims Handled.

	L/D.	O/C. & lee.	Total.
1915	2671	1196	3867
1916	2210	1328	3538
1917	1525	1200	2725

Average Nov.-Dec., 1914, January, 1915.

On Basis of \$2.50 per Ton.

New York.....	\$15.68 per car, Icing Charges.
Boston	16.55 " " " "

On Basis \$4.00 per Ton, 1914-1915.

New York.....	\$25.09 per car, Icing Charges.
Boston	26.48 " " " "

141 Thereupon JESSE D. SHINEMAN was called as a witness for the petitioner and testified as follows: I live in Chicago and am a certified public accountant. I was employed by the petitioner to prepare its claim under section 209 of the Transportation Act 1920. I prepared all reports called for by the orders of the Interstate Commerce Commission. The paper shown me correctly exhibits the result of operation of petitioner for the period between March 1 and September 1, 1920, and the result of this operation was a loss.

The paper referred to was now offered in evidence as part of "Plaintiff's Exhibit 24" and is as follows:

(Here follows Plaintiff's Exhibit 24, marked page 142.)

143 At the time said part of "Plaintiff's Exhibit 24" was offered and received in evidence the following colloquy took place in open court:

The Court: * * * I do not think there is any duty upon the Court in this hearing to do more than ascertain whether or not the petitioner is of a class entitled to relief under this section. I would not have to go into the figures.

Mr. Wheeler: Not at all, your Honor.

The Court: The evidence is that this road, or whatever it is, was operated at a loss during that six-months' period; and you have furnished certain reports tending to support that.

Mr. Wheeler: Yes, sir; in obedience to the order of the Commission. And I do not apprehend that any action by this Court will determine the amount of the deficiency or whether or not there was a deficiency. This whole matter is left open for the Commission, notwithstanding any action by this Court.

Net Railway Operating Income (or Deficit) for the Guaranty Period, March

Income:	March, 1920.	April, 1920.
Commissions .....	.....	.....
Mileage Earnings—NYD.....	\$8,287.49	\$6,753.91
“ “ —MRD.....	2,807.19	2,324.06
Leasing Salvage.....	.....	.....
Car Rentals—NYD.....	.....	143.00
“ —MRD.....	211.16	25.00
Operating Revenue.....	11,305.84	9,245.97
Less Expenses:		
Floor Racks.....	15,529.88	11,956.83
Car Repairs—NYD.....	4,225.50	1,872.01
“ —MRD.....	.....	.....
Cleaning Cars.....	.....	.....
Weighing & Stenciling.....	.....	.....
Traveling Expense.....	803.20	516.16
Telegraph “.....	5.44	64.61
Stationery & Printing.....	109.63	127.89
Rent of Offices.....	451.94	475.94
“ Telephones.....	36.86	65.23
Salaries.....	2,011.60	1,997.15
General Expense.....	1,450.56	1,001.56
Cars Destroyed.....	.....	.....
Depr. of Equipment.....	3,390.57	3,419.11
Off. F. & F.....	16.61	16.61
Lubricating Cars.....	.....	.....
Taxes—Property.....	225.00	225.00
Franchise.....	.....	.....
Income.....	.....	.....
Miscellaneous.....	42.31	45.98
Car Rentals—MRD.....	6,405.00	6,183.00
Total Expenses.....	34,704.10	27,967.08
Deficit.....	\$23,398.26*	\$18,721.11*

[*Red in copy.]

PL'FF's EX. 24.

ch 1 to August 31, 1920, as Adjusted in Accordance with the Provisions of Section 209 of the Transportation Act 1920, from Records Maintained in Compliance with the Order of the Commission Dated June 10th, 1920.

0	Audited during guaranty period.				Total.	Sept., '20, to 12/31/21 (page 2).	Elimination and additions.	Total.	Adjustments as per Schedule 3.
	May, 1920.	June, 1920.	July, 1920.	August, 1920.					
1		\$170.68	\$1.19*		\$169.49		\$169.49*		
3	\$8,506.16	9,235.60	9,235.60	\$8,625.86	50,644.62	\$120.24	207.62	\$50,972.48	
	2,188.01	2,405.28	2,825.04	3,118.86	15,668.44	22.75	13.68*	15,677.51	
0		52.46	109.96	173.66	479.08	55.00*	55.00*	360.08	
0	296.52	194.08	146.15	284.44	1,157.35	45.00*		1,112.35	
7	10,990.69	12,058.10	12,315.56	12,202.82	68,118.98	42.99	30.55*	68,131.42	
				3,154.69	3,154.69			3,154.69	
3	19,529.46	14,773.18	17,993.35	29,771.82	109,554.52	2,080.24		111,634.76	
1	4,175.72	3,748.15	3,326.99	7,410.56	24,758.93	768.57		25,527.50	
				1,234.00	1,234.00			1,234.00	
		4.20		13.20	17.40			17.40	
8	560.39	480.19	509.05	696.06	3,565.05			3,565.05	
1	424.33	207.52	212.92	265.34	1,180.16	.30	5.52*	1,174.94	
9	388.14	251.70	391.64	355.88	1,624.88		60.00*	1,564.88	
4	497.08	497.08	497.08	505.88	2,925.00		76.25*	2,848.75	
3	91.91	97.98	112.90	223.36	628.24	5.88	22.96*	611.16	
5	2,182.75	3,201.02	4,627.96	1,352.11	15,372.59			15,372.59	
6	1,829.03	2,614.14	16.30*	7,572.27	14,451.26	25.00	2,669.16*	11,807.10	
				10,030.66*	10,030.66*			10,030.66*	
1	3,390.75	3,388.90	3,384.88	3,382.78	20,356.99			20,356.99	
1	16.61	16.61	16.61	23.99	107.04			107.04	
				699.72	699.72			699.72	
0	225.00	225.00	225.00	225.00	1,350.00	1,495.04		2,845.04	
				125.00	125.00		62.50*	62.50	
			9.71		9.71		9.71*		
8	57.51	8.32		152.29	306.41		30.66*	275.75	
0	5,923.50	5,907.50	5,865.00	5,650.00	35,934.00	15,511.00		51,445.00	
3	39,292.18	35,421.49	37,156.79	52,783.29	227,324.93	19,886.03	2,936.76*	244,274.20	
1*	\$28,301.49*	\$23,363.39*	\$24,841.23*	\$40,580.47*	\$159,205.95*	\$19,843.04*	\$2,906.21	\$176,142.78*	

PLFF's Ex. 24.

ated in Accordance with the Provisions of Section 209 of the Transportation Act 1920, from Records Maintained in Compliance with the
of the Commission Dated June 10th, 1920.

od.	July, 1920.	August, 1920.	Total.	Sept., '20, to 12/31/21 (page 2).	Elimination and additions.	Total.	Adjustments as per Schedule 3.	Totals as adjusted.
020.								
18	\$1.19*	.....	\$169.49	.....	\$169.49*	.....	.....	.....
30	9,235.60	\$8,625.86	50,644.62	\$120.24	207.62	\$50,972.48	.....	.....
28	2,825.04	3,118.86	15,668.44	22.75	13.68*	15,677.51	.....	.....
.
16	109.96	173.66	479.08	55.00*	55.00*	360.08	.....	.....
08	146.15	284.44	1,157.35	45.00*	.....	1,112.35	.....	.....
0	12,315.56	12,202.82	68,118.98	42.99	30.55*	68,131.42	.....	.....
.	.....	3,154.69	3,154.69	.....	.....	3,154.69	.....	.....
18	17,993.35	29,771.82	109,554.52	2,080.24	.....	111,634.76	.....	.....
15	3,326.99	7,410.56	24,758.93	768.57	.....	25,527.50	.....	.....
.	.....	1,234.00	1,234.00	.....	.....	1,234.00	.....	.....
20	.....	13.20	17.40	.....	.....	17.40	.....	.....
19	509.05	696.06	3,565.05	.....	.....	3,565.05	.....	.....
32	212.92	265.34	1,180.16	.30	5.52*	1,174.94	.....	.....
70	391.64	355.88	1,624.88	.....	60.00*	1,564.88	.....	.....
08	497.08	505.88	2,925.00	.....	76.25*	2,848.75	.....	.....
08	112.90	223.36	628.24	5.88	22.96*	611.16	.....	.....
02	4,627.96	1,352.11	15,372.59	.....	.....	15,372.59	.....	.....
14	16.30*	7,572.27	14,451.26	25.00	2,669.16*	11,807.10	.....	.....
.	.....	10,030.66*	10,030.66*	.....	.....	10,030.66*	.....	.....
30	3,384.88	3,382.78	20,356.99	.....	.....	20,356.99	.....	.....
31	16.61	23.99	107.04	.....	.....	107.04	.....	.....
.	.....	699.72	699.72	.....	.....	699.72	.....	.....
00	225.00	225.00	1,350.00	1,495.04	.....	2,845.04	.....	.....
.	.....	125.00	125.00	.....	62.50*	62.50	.....	.....
.	9.71	.....	9.71	.....	9.71*	.....	.....	.....
32	.....	152.29	306.41	.....	30.66*	275.75	.....	.....
50	5,865.00	5,650.00	35,934.00	15,511.00	.....	51,445.00	.....	.....
19	37,156.79	52,783.29	227,324.93	19,886.03	2,936.76*	244,274.20	.....	.....
19*	\$24,841.23*	\$40,580.47*	\$159,205.95*	\$19,843.04*	\$2,906.21	\$176,142.78*	.....	.....



The Court: I will receive those, and overrule the objection.

144 Thereupon E. J. BELANGER was called as a witness for the petitioner and testified as follows: I am employed by petitioner. I take care of all cars passing Chicago gateways also distribution of equipment and solicitation of business. I have been with the Company since March 26, 1910. I am familiar with the car accountant's duties. A movement of a car from Chicago to the West and thence loaded east to destination illustrates a movement of a car from Chicago to the East if the western end of the trip and the interchange at Chicago are omitted. Our inspector advises us each morning of the cars that are fit for service. Upon receiving that information I distribute cars to Western connections for dairy loading and likewise to our Chicago team tracks to take care of Chicago trade. A record is made of this distribution. This paper shown me shows the number of cars on hand March 1, as reported by our inspector and the distribution of cars to various railroads.

This paper was now offered in evidence as "Plaintiff's Exhibit 25" and is as follows:

145 PL'TIFF'S No. 25.

March 31st, 1918.

N. Y. D.'S on hand, 2.
Out of shops, 20.
5 R. L. Omaha, Nebr.
5 C. B. & Q. Galesburg, Ill.
2 C. & A. Roadhouse, Ill.
3 I. C. Dubuque, Ia.
3 C. & N. W. Clinton, Ia.
2 C. G. W. Oelwein, Ia.
2 Chgo. Team Track.

Phoned Jensen 3/31, 3 P. M.

146 When these cars are assigned to these different roads I communicate with our men at Elsdon yard, first by telephone, and then by letter. This letter shown me illustrates this method of communication.

The letter referred to was now offered in evidence as "Plaintiff's Exhibit 26" and is as follows:

147

PLAINTIFF'S EXHIBIT No. 26.

March 31st, 1918.

J. J. Murdock,
Asst. Agent Grand Trunk Railroad.
Elsdon, Illinois.

DEAR SIR:

This will confirm phone conversation of date requesting you to card cars as follows:

5 R. I. Omaha, Nebr.
5 C. B. & Q. Galesburg, Ills.
2 C. & A. Roodhouse, Ill.
3 I. C. Dubuque, Iowa.
3 C. & N. W. Clinton, Ia.
2 C. G. W. Oelwein, Ia.
2 Chicago Team Track.

Yours truly,

C. H. COOPER,
President & General Manager.

148 I know this distribution order has been complied with when, on the following morning, I receive Form 77, a copy of which is now shown me.

This paper was now offered in evidence as "Plaintiff's Exhibit 27" and is as follows:

(Here follows Plaintiff's Exhibit 27, marked page 149.)

150 When I get this report I personally check the report to see if my orders have been complied with; then I turn the report over to the car accountant and he enters the movement of the car in his car record book. This paper shown me is a page of the car record relating to the movement of car 14277. The colors of the ink have some significance. The record is clear and intelligible to one familiar with it.

This page of the car record was thereupon offered in evidence as "Plaintiff's Exhibit 39" and is as follows:

(Here follows Plaintiff's Exhibit 39, marked page 151.)

152 After the car accountant enters in his book the record of the movement of the car he works the car board. This photograph shown me is a representation of this car board. We have tags with numbers that correspond to our car numbers. When a car is on a particular line of railroad he hangs up a tag against that line as indicated on the board and as the cars are changed from one

New York Despatch Refrigerator Line National Despatch Refrigerator Line

Buffalo 27

DAILY REPORT OF CARS REQUIRED, DELIVERED AND ON HAND

192

ELSDON, ILL., March 31st 1918

REQUISITIONS

ROAD	STATION	DATE ORDERED	NO. CARS ORDERED	HAVE SUPPLIED	HOW SHORT	REMARKS
C.R.I.&P.	Omaha	3/31	5	5		900-1000-13673 920-14277
C.B.&Q.	Galesburg	3/31	5	5		919-989-075- 848 1029-963
C & A	Roadhouse	"	2	2		14228-14565
Ill Cen	Dubuque	"	3	3		13678-14567- 1030
C # N W	Clinton	"	3	3		1035-1097-13675
C G W	Oelwein	"	2	2		1067-1067
Team Track Chicago	Chicago	"	2	2		14356-13697

FOLLOWING CARS FURNISHED ON ORDERS SINCE LAST REPORT

Refrigerator Company, a Corporation,

Appellant,

Page 149

vs.

Interstate Commerce Commission.

AVAILABLE CARS IN CHICAGO THIS A. M.

TAYLOR STREET		ELSDON	
TEAM TRACK	HOUSE TRACK	GRAND TRUNK YARDS	C. N. Y. & B. R. CO. SHOP
Dairy C. N. Y. & B.	78		

J. J. MURDOCK, A. AGT

JANES

AGENT

149

0.

ion,
nt,

Page 151.

1947	Tfr.	1	2	28	29	30	31	Total
JUNE								
JULY								
AUG.								
SEPT.								
OCT.								
NOV.								
DEC.								
JAN.								
FEB.								
MAR.								
APR.								
MAY								

DATE 5/20/49

220.7

1/9

No. 3682, Special Calendar No. 30.
 United States, ex relators,
 Chicago, New York & Boston Re-
 frigerator Company, a Corporation,
 Appellant,
 vs. -
 Interstate Commerce Commission.

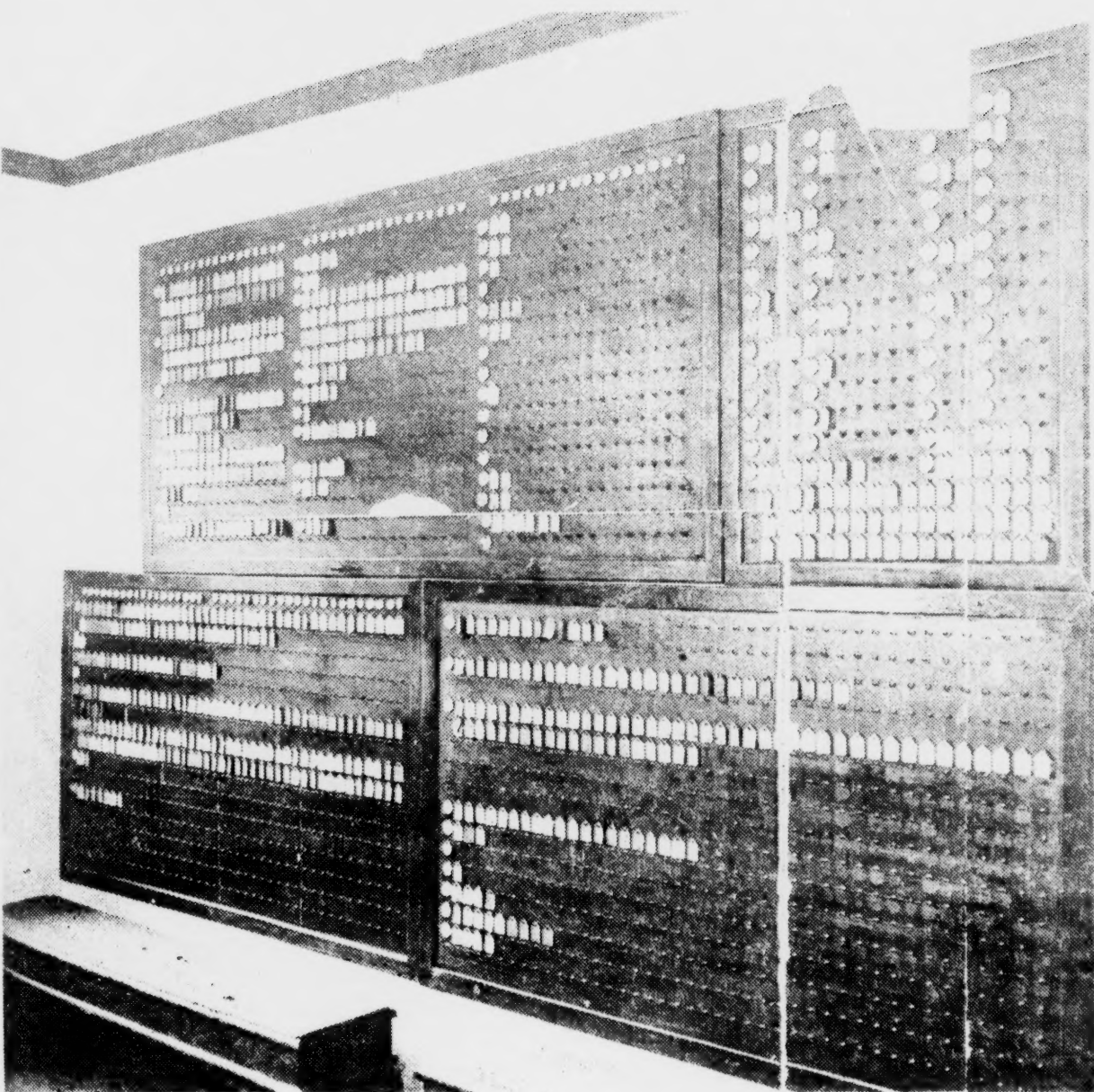
Page 151.

YEAR FROM 1918 TO 1919

1919	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total
JUNE																																
JULY																																
AUG.																																
SEPT.																																
OCT.																																
NOV.																																
DEC.																																
JAN.																																
FEB.																																
MAR.																																
APR.																																
MAY																																

Case No. 89

19



No. 3882. Special Calendar No. 30.
United States, ex relatione,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

vs.
Interstate Commerce Commission.

Page 153.

road to another the tags are changed accordingly, so that this board shows at a glance the lines of railroads upon which all of peutioner's cars are located. We have boards which represent different roads, and as the car passes from one road to another the tags are changed accordingly.

This photograph was now offered in evidence as "Plaintiff's Exhibit 44" and is as follows:

(Here follows Plaintiff's Exhibit 44, marked page 153.)

154 We get advices from the shipper as a usual thing. This paper shown me is a copy of a letter of advice from a shipper as to movement of car 14277.

This paper was offered in evidence as "Plaintiff's Exhibit 29" and is as follows:

155

PL'T'FF'S No. 29.

Iowa City Produce Company,

Dealers in

Butter, Eggs, and Poultry.

Iowa City, Ia., April 20th, 1918.

Mr. C. R. Cooper,

General Manager New York Despatch Ref'g Line,
Chicago, Illinois:

Today we have shipped N. Y. D. R. L. 14277 to Great Atlantic and Pacific Tea Company Jersey City care of your line Penna. delivery. This car contains 454 cases eggs billed "Do not ice in transit." Kindly see that there is no delay enroute advising us passing at Chicago.

Yours truly,

J. JONES,

Mgr. Iowa City Produce Company.

156 When a car passes from a western line to the Grand Trunk Western we get a report, and a similar report is furnished thereafter when the car passes from one road to another. The paper shown me is a copy of such a report.

This paper was offered in evidence as "Plaintiff's Exhibit 30" and is as follows:

(Here follows Plaintiff's Exhibit 30, marked page 157.)

158 When the car is delivered to the Grand Trunk Western it is waybilled and a copy of the billing is sent to us and is checked with the shipper's advices as to icing, destination commodity and consignee. If any error is discovered we immediately take up

with billing station; likewise if there be any error in the rate applied. The paper shown me is a copy of the waybilling referred to.

The paper was thereupon offered in evidence as "Plaintiff's Exhibit 31" and is as follows:

(Here follows Plaintiff's Exhibit 31, marked page 159.)

160 Our office also calls for what is known as a forwarding report, which shows the time the car is received at a station, and the time forwarded. The paper shown me is one of the forwarding reports.

The paper was thereupon offered in evidence as "Plaintiff's Exhibit 32" and is as follows:

(Here follows Plaintiff's Exhibit 32, marked page 161.)

162 After the billing has been checked the shipper is notified by an advice card, of the passing of the shipment through Chicago gateways, the date forwarded, to whom consigned and the contents of the car. The paper shown me is such notification.

The paper was offered in evidence as "Plaintiff's Exhibit 34" and is as follows:

(Here follows Plaintiff's Exhibit 34, marked page 163.)

164 There is a report made up in our office called a manager's report, the purpose of which is to advise our Eastern representatives and also the car accountant of the passing of the car through Chicago gateways. The paper shown me is a copy of such a report.

The paper was offered in evidence as "Plaintiff's Exhibit 33" and is as follows:

(Here follows Plaintiff's Exhibit 33, marked page 165.)

166 When the car passes off the Grand Trunk Western at Port Huron, we get another report. The paper shown me is such a report.

This paper was offered in evidence as "Plaintiff's Exhibit 35" and is as follows:

(Here follows Plaintiff's Exhibit 35, marked page 167.)

Ref 9x 31

NEW YORK DESPATCH REFRIGER

Initial Road

FROM BLUE ISLAND

VIA N.Y.D. BLACK ROCK DELAWARE LACKAWANNA

THIS SPACE FOR BINDING

CONSIGNEE Connecting Line Reference, Original Car and Way-Bill Number, and Point of Shipment	MARKS, CONSIGNEE AND DESTINATION.	NO. PKGS.	ARTICLES & THINGS (C.B.)
C.R.T.P.	GREAT ATLANTIC & PACIFIC TEA COMPANY		
A 586 4/23/18	JERSEY CITY, N.J.	454	CASES
498 4/20/18			No. 388
IOFA CITY PRODUCE CO.	DO NOT ICE IN TRANSIT		United
	C/O PENNA R.R.		Chicago
			Refriger
			Intern

NOTE—When the through rate is from a point back of the siding point, the way-bill should show the proportion. Arbitrarily

(No.) (Initials.)

Original Point } of Shipment } Original Car

Transferred at To Car No. Date 19

Transferred at To Car No. Date 19

Date of arrival at point billed to

(PUT NO STAMPS ABOVE THIS LINE)

1ST STAMP	2D STAMP	3D STAMP
	OK	

These spaces are for Junction Stamps to be placed hereon by Junction Fore

ERATOR LINE

 Date APRIL 23rd 1918

 TO BRANLEY JET

 WAY-BILL No. 3458

 Car Int'l. N.Y.D. Car No. 14277

CLASS AND CLASSIFICATION CODES (O.R., C.R., REL., STD., ETC.)	WEIGHT	THROUGH RATE	LINE CHARGES	ADVANCES IN DETAIL	PREPAID	TOTAL TO COLLECT
PARTY.		27.5		66 17		
AND MARK	24,062	74	178 06			24423

3882, Special Calendar No. 30.
 ted States, ex relations,
 nago, New York & Boston Re-
 perator Company, & Corporation,
 Appellant,

vs.
 Interstate Commerce Commission.

Page 159.

Notes East and West between original shipping point and destination should be plainly inserted, and deducted before prorating when Agents are so instructed.

ROADS	PER CENTS	PROPORTION OF LINE CHARGES
R.R.	.	
R.R.	.	
R.R.	.	
R.R.	.	
R.R.	.	
R.R.	.	
R.R.	.	
TOTAL		\$ C

EXACT COPY.

4TH STAMP	5TH STAMP	AGENT AT DESTI- WILL HEREIN NATION STAMP THE DATE RECEIVED
-----------	-----------	---

on Forwarding Agents, and MUST NOT BE WRITTEN ON. Stamp from left to right in the order of routing.

FD-302 (Rev. 5-22-64) Form 100

Agent at BLUE ISLAND, ILLINOIS. Station on Grand Trunk R.R. R. R.

19. 18

WAY-BILL				CAR		TRAIN No.	FROM	DESTINATION	CONTENTS	TIME						*ICE		BALT
DATE	No.	No.	INVOICE	ARRIVAL						DEPARTURE			Amount in Car on Arrival (Estimated)	Amount Added	Amount Added			
				P.	M.	E.	DATE	HOUR	A. M. P. M.	DATE	HOUR	A. M. P. M.						
April 23	3458	14277	NYD	88	Iowa City Ia	Kearney Jct	E	4	23	6	P.M.	4	23	8	50	None	None	
					Iowa City Produce Co. Great Atlantic & Pacific Tea Co. Penna Del'y.													
					No. 3882. Special Calendar No. 30. United States, ex relatione, Chicago, New York & Boston Re- frigerator Company, a Corporation, Appellant, vs. Interstate Commerce Commission.													
					Page 161.													
					P. 161													

IT WILL BE UNNECESSARY TO RE-ICE CARS WHEN THEY REQUIRE LESS THAN 1,000 LBS. TO MAKE UP QUANTITY CALLED FOR IN ICING INSTRUCTIONS No

AGENTS AT ICING OR JUNCTION STATIONS EAST OF CHICAGO WILL PLEASE ADD SUCH CARS AS ARE NOT SHOWN HEREON.

CONDITION

What was condition of ice? Answer:

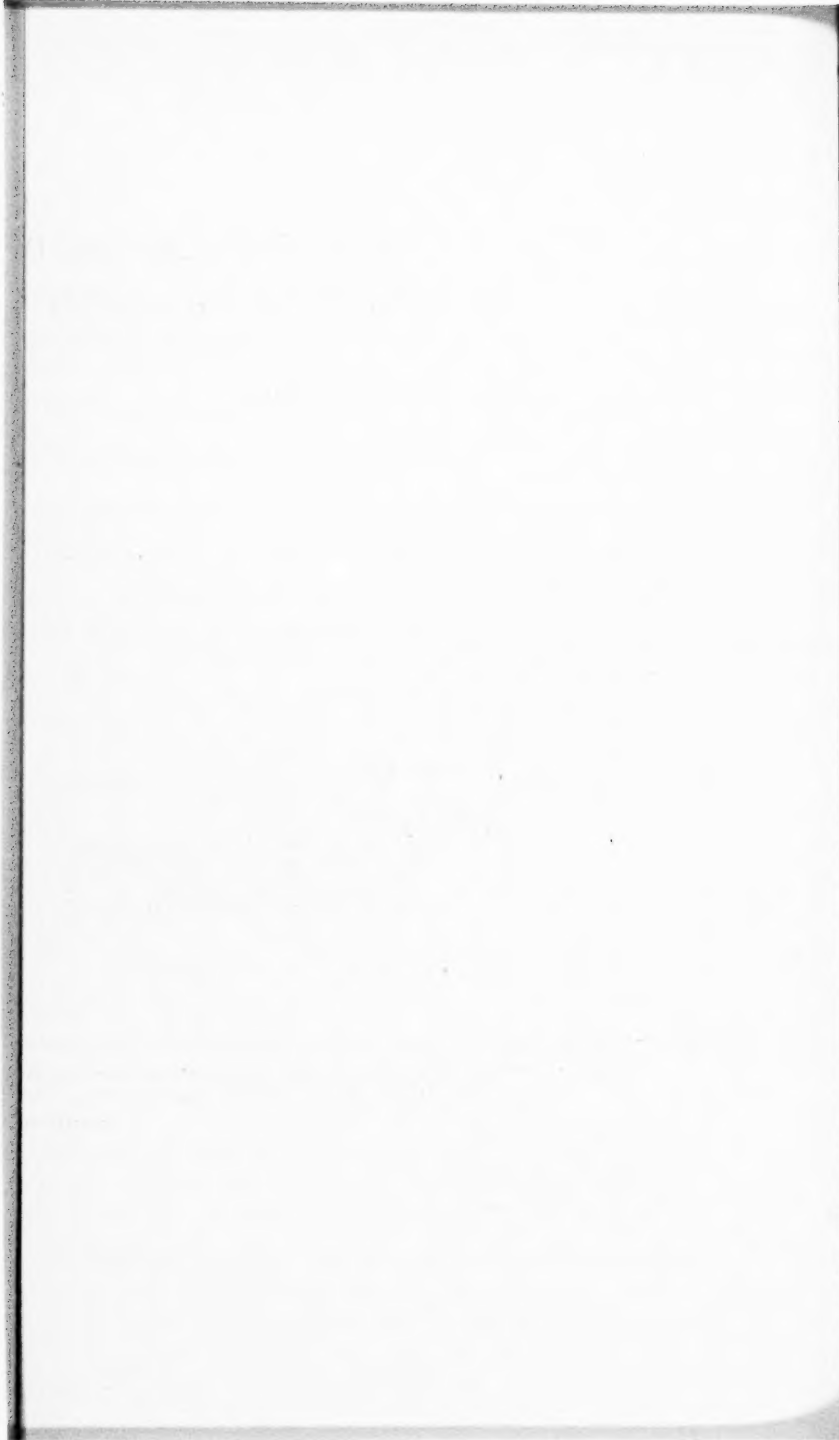
Was waste pipe probed, and free from stoppage? Answer:

Was there any leakage or overflow? Please state where, cause of same, or if in good condition. - Answer

Please report by letter promptly any damage to property to your Freight Claim Agent and to:

C. R. COOPER, PRES. AND GEN'L MGR.,
181 QUINCY STREET CHICAGO, ILL.

161



No. 3882. Special Calendar No. 30.
 United States, ex relations,
 Chicago, New York & Boston Re-
 frigerator Company, a Corporation,
 vs.
 Appellant.
 Interstate Commerce Commission.

The following described property:
 Bottled Jersey City
 Consigned by Gr. A. & P. T. Co.
 To the Beller _____
 Shipped Eggs 240624
 Shipped Eggs _____
 Forwarded from _____ 4/22 LB.
 Car No. 14277 _____ N. Y. D.

To enable us to furnish this information on future shipments
 be sure and show routing on all Lading
 Via N. Y. D. R. Lines.

THANK YOU, B.
 Yours truly,
 C. R. COOPER, Pres. and Gen'l Mgr.

OK *HP*
POST CARD
 The space below is for address only
Mo.
Boyle

IOWA CITY PRODUCE CO.,

IOWA CITY, IA.

92

New York Despatch Refrigerator Line National Despatch Refrigerator Line

CHICAGO, NEW YORK AND BOSTON REFRIGERATOR CO.

DAILY REPORT OF CARS OF THIS COMPANY

(Managers)

Passing _____ Station April 24th 1918

Chicago Gateways.

Include all
{ New York Despatch Refrigerator Line Cars, 901 to 1200
New York Despatch Refrigerator Line Cars, 2000 to 4362
New York Despatch Refrigerator Line Cars, 13062 to 14508
National Despatch Refrigerator Line Cars, 7601 to 7607

SHOW EAST AND WEST BOUND CARS SEPARATELY

ROAD	CAR NUMBER AND INITIALS	LOADED FROM	Destination	CONSIGNEE	Com'ty	FORWARDING		REMARKS
						DATE	TRAIN TIME	
R.I.	14277	N.Y.D.	Iowa City	Jersey City	G.A.&P.T.C. E	23	88 850	P.M.

Buff 40.33.

No. 3832. Special Calendar No. 30.
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Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

vs.

Interstate Commerce Commission.

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New York Despatch Refrigerator Line National Despatch Refrigerator Line

CHICAGO, NEW YORK AND BOSTON REFRIGERATOR CO.

DAILY REPORT OF CARS OF THIS COMPANY

 Passing Port Huron Tunnel Station April 24th 192 18

Include all {
 { New York Despatch Refrigerator Line Cars, 901 to 1200
 { New York Despatch Refrigerator Line Cars, 2000 to 4362
 { New York Despatch Refrigerator Line Cars, 13662 to 14568
 { National Despatch Refrigerator Line Cars, 7601 to 7607

SHOW EAST AND WEST BOUND CARS SEPARATELY

ROAD	CAR NUMBER AND INITIALS	LOADED FROM	Destination	CONSIGNEE	Com'ty	FORWARDING DATE TRAIN TIME	REMARKS
	14277 NYD	Blue Island		Black Rock	Dairy		

40.35.
 Diff.

76

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Appellant,
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Interstate Commerce Commission.

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NEW YORK DESPATCH REFRIGERATOR LINE

C. R. COOPER,
Pres. and Gen. Manager
Chicago, Ill.

April 25 1918

192
LB

Dear Sir:

Following cars loaded with New York Despatch Line Freight

passed Black Rock as follows:

CAR		DESTINED	DATE HOUR		TRAIN
INITIAL	NUMBER		RECEIVED	FORWARDED	
NYD	14277	Jersey City	4/25 7 A.M.	4-25	
<p>No. 3882, Special Calendar No. 30. United States, ex relations, Chicago, New York & Boston Re- frigerator Company, a Corporation, Appellant, vs. Interstate Commerce Commission.</p>					
<p>98</p>					

No. 36.
Jaffa

Page 169.

Ph.

R. C. Holden

Agent.

GRAND TRUNK RAILWAY SYSTEM

~~DISPATCH~~

TELEGRAM

~~SAFETY FIRST~~

Port Huron Tunnel, Aug. 13th, 1921.

C. R. Cooper,
Chicago, Ill.

CE&Q 36767 diverted at Niagara Falls as requested.

S. L. Trusler.
9:46 AM.

No. 3382, Special Calendar No. 30.
United States, ex relatione,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

vs.
Interstate Commerce Commission.

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GRAND TRUNK RAILWAY SYSTEM

TELEGRAM

SAFETY FIRST

~~BB-BRIEF~~

Chicago, August 18th, 1921.

S. L. Trusler, Supt. Term.,
Grand Trunk Railway,
Port Huron, Mich.

No. 3882, Special Calendar No. 30.
United States, ex relatione,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,
vs.
Interstate Commerce Commission.

Page 198

CB&Q 36615 Eggs Philadelphia East train 484 17th now routed
Pennsylvania. Divert via LV-P&R delivery. If car passed
wire ahead. Advise.

11:15 AM.

C. R. COOPER.

GRAND TRUNK RAILWAY SYSTEM
TELEGRAM

SAFETY FIRST

~~BE BRIEF~~

Port Huron Tunnel, 2:30 PM Aug. 18th

C. R. Cooper,
Chicago, Ill.

CB&Q 36615 diverted as requested.

No. 3882, Special Calendar No. 30.
United States, ex relatione,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

vs.

Interstate Commerce Commission.

S. L. Trusler.
3:40 PM.

Page 199.

CLASS OF SERVICE REQUIRED	
Telegram	
Day Letter	
Night Message	
Special Letter	
Please note that as a rule the name of person or firm to whom the message is addressed will be transmitted as a FULL RATE TELEGRAM	

WESTERN UNION TELEGRAM

NEWCOMB CARLTON, PRESIDENT GEORGE W. E. AYERS, FIRST VICE-PRESIDENT

Sender's No.	
Date	
Time Paid	

Send the following message, subject to the terms on back hereof, which are hereby agreed to

New York, N. Y. Aug. 22, 21.

Frank Atlass Produce Co.,
Lincoln, Ill.

New York Central fifteen five five eight eight

arrived St. Johns Park 1:00 AM to-day.

N. O. Holden, Agent,
New York Despatch Refg. Line.

CC Mr. C. R. Cooper.

Yours of the 19th, file 106-B
No. 3682, Special Calendar No. 30.
United States, ex relatione
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

vs.
Interstate Commerce Commission.

Page 200.

GRAND TRUNK RAILWAY SYSTEM

TELEGRAM

SAFETY FIRST

BE BRIEF

Niagara Falls, August 20th, 1921.

C. R. Cooper
Chicago, Ill.

Yours 19th. NYC 155588 delivered NYC this AM billed to
St. Johns Park, NY.

4:43 PM.

W. Kew.

No. 3982, Special Calendar No. 30.
United States, ex relatione,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant.

vs.

Interstate Commerce Commission.

Page 201.

CLASS OF SERVICE, DESIRED	
Telegram	
Day Letter	
Night Message	
Special Letter	
Note: The above rates apply to all telegrams sent by Western Union, except those sent by the following companies: AMERICAN TELEGRAPH & TELEPHONE CO. NORTHERN TELEGRAPH CO. PACIFIC TELEGRAPH CO.	

WESTERN UNION TELEGRAM

NEW-COMMERCIAL, PRESIDENT

Send the following message, subject to the terms on back hereof, which are hereby agreed to:

Chicago, August 19th, 1921.

Charge to CRYZBR CO.

Frank Atlas Produce Company,
Lindale, Ill.

NYC 155588 arrived Kankakee 1:00 PM, forwarded 4:00 PM 18th.

No. 3982, Special Calendar No. 30.
United States, ex relatione,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

Page 302.

C. H. COOPER.

vs.
Interstate Commerce Commission.

GRAND TRUNK RAILWAY SYSTEM

BE BRIEF

TELEGRAM

SAFETY FIRST

Chicago, Aug. 19th, 1921.

W. Kew, Agent,
Grand Trunk Railway,
Niagara Falls, Ont.

NYC 155588 from Lincoln, Ill., dressed poultry passed Kankakee
18th billed New York via Lehigh Valley. Divert St. Johns
Park delivery, NYC. Advise.

2:20 PM.

C. R. Cooper.

United States, ex relaticae.
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

vs.

Interstate Commerce Commission.

Page 203.

NEW YORK DESPATCH REFRIGERATOR LINE NATIONAL DESPATCH REFRIGERATOR LINE

CHICAGO, NEW YORK AND BOSTON REFRIGERATOR CO.

C. R. COOPER,
PRESIDENT AND GENERAL MANAGER

W. A. LALLY,
VICE PRESIDENT

3075 MEA B. 101 QUINCY STREET



W. A. LALLY,
VICE PRESIDENT

G. E. JAMES,
AGENT

E. J. DELANDER,
AGENT

TELEPHONE CHICAGO
MA 1-1111
MA 1-1112
MA 1-1113

GENERAL OFFICES

CHICAGO August 19th, 1921.

No. 3863, Special Calendar No. 30.
United States, ex relations,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

File No. 106-2.

vs.
Interstate Commerce Commission.

Page 204.

Mr. R. C. Holden, Agent,
NID Refg. Line,
New York, N. Y.

Dear Sir:-

NYC 166588 shipped from Lircoln,
Ill., August 17th. Car passed Kankakee August 18th, and
was routed in connection with the Lehigh Valley. I have
taken up with Agent at Niagara Falls to divert to NYC; St.
Johns Park Delivery.

Kindly wire Frank Atlas Produce
Company, Line-In, Ill., arrival of car, sending copy of your
wire to this office.

Yours truly,

C. R. COOPER.

President & General Manager.

WAL

1111

PK

CLASS OF SERVICE DESIRED	
Telegram	
Day Letter	
Night Message	
Payment should be made at a 100% cash rate and in advance. No cash on account or deferred payment will be transmitted as a Western Union Telegram.	

WESTERN UNION TELEGRAM

NEWCOMB CARLTON, PRESIDENT GEORGE W. E. ATKINS, FIRST VICE-PRESIDENT

Received by	
Date	
Time Filed	

Send the following message, subject to the terms on back hereof, which are hereby agreed to

S. E. James, care
New York Dispatch,
101 Quincy St.,
Chicago, Ill.

NYC 156568 containing dressed poultry and eggs shipped W. J.
Minrichs and Blanchard Bros. Co., New York to-day IC-Kankakee-
MYD-St. Johns Park delivery. Trace car wire arrival.

Lincoln, Ill., 2:10 PM 8/17/21.
No. 3882 Special Calendar No. 30.
United States, ex relations.
Chicago, New York & Boston Re-
frigerator Company, s Corporation,
Appellant, } Page 205.
vs.
Interstate Commerce Commission.

Attest: Fred. Co.

2:30 PM.

GRAND TRUNK RAILWAY SYSTEM
TELEGRAM

~~SAFETY FIRST~~

~~RECEIVED~~

C B Tunnel Yard 8 A.M. April 24th 1918.

C.R.Cooper. Chicago.

N.Y.D. 14277 eggs Jersey City arrived in 88 at noon today disabled
for wheels.

S.L.T.----- 12~~4~~30.P.M.

No. 3882, Special Calendar No. 30.
United States, ex relatione,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,
vs.
Interstate Commerce Commission.

Page 206.

13

WESTERN UNION TELEGRAM

1. IS OF SERVICE DESIRED?	
Yes	No
2. DAY LETTER	
Day Letter	Night Letter
3. NIGHT LETTER	
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100. NIGHT LETTER (to be filled in by the sender)	

NEWCOMB CARLTON, PRESIDENT

Send the following message, subject to the terms on back hereof, which are hereby agreed to

Chicago, April 24th, 1913.

Charge to CHYABA CO.

R. G. Holden, Agent,
NYD Line, 6 Harrison St.
New York, N. Y.

NYD 14277 Eggs Jersey City arrived Port Huron noon today
disabled for wheels.

C. R. COOPER.

1:30 PM. No. 3982 Special Calendar No. 30.
United States, ex relations,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,
vs.
Interstate Commerce Commission.

Page 207.

NEW YORK DESPATCH REFRIGERATOR LINE NATIONAL DESPATCH REFRIGERATOR LINE

CHICAGO, NEW YORK AND BOSTON REFRIGERATOR CO.

C. R. COOPER,
PRESIDENT AND GENERAL MANAGER
GEO. H. COURTEMANCHE,
SECRETARY AND TREASURER
SUITE 600-A, 181 QUINCY STREET



W. A. LALLY,
GENERAL AGENT

S. E. JAMES,
AGENT

E. J. BELANGER,
AGENT

TELEPHONES: WAB 4-4000
CUB 4-4000
CUB 4-4000

GENERAL OFFICES

CHICAGO April 24th, 1918

No. 3982, Special Calendar No. 30,
United States, ex relations,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

vs.
Interstate Commerce Commission,

File No. 3982-5.

Page 208.

Iowa City Produce Co.,
Iowa City, Iowa.

Gentlemen:

I am sorry to advise that NYD
11277 shipped by you on April 20th with Eggs destined Jersey
City, N. J., arrived at Port Huron tunnel to-day disabled
for wheels.

Car is now undergoing repairs and
will be forwarded in next manifest train.

Soliciting your patronage, we are

Yours truly,

C. R. COOPER,

President & General Manager.

EWB/L.

CD to J. J. Gallagher, Agent,
Des Moines, Iowa.

137

R

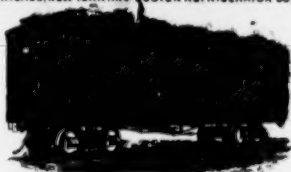
NEW YORK DESPATCH REFRIGERATOR LINE, NATIONAL DESPATCH REFRIGERATOR LINE

CHICAGO, NEW YORK AND BOSTON REFRIGERATOR CO.

C. R. COOPER
PRESIDENT AND GENERAL MANAGER

ED. H. COUDEMACHE
MANAGER AND TRAVELER

ROUTE 200-A, 101 QUINCY STREET



W. A. LALLY
CHICAGO, ILL.

E. C. JAMES
CHICAGO

E. J. BELANGER
ALBANY

TELEPHONE: WABO 1-2
WABO 2-2
WABO 3-2
WABO 4-2

GENERAL OFFICES

CHICAGO April 28th, 1932.

No. 368, Special Calendar No. 30,
United States, ex relations,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

vs.
Interstate Commerce Commission.

File B/L 17849.

Page 209

Mr. O. A. Woodard, Agent,
Grand Trunk Railroad,
Blue Island, Ill.

Dear Sir:

Please refer to Blue Island to East
R. St. W. Mass., waybill 2737 of April 23rd, covering MRLX 8150.

This shipment weighed 15,000# and
was billed out at the carload rate. Should this not have
been billed out as 20,000#. Arrange to make correction,
furnishing us with copy of same, figuring it on whatever basis is
the cheapest, carload or LCL.

Yours truly,

C. R. COOPER.

WAB/L.

President & General Manager.

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Pa

For use in connection with the Straight Through Bill of Lading adopted by carriers in Official and Western Classification territories

NEW YORK DESPATCH REFRIGERATOR LINE **NATIONAL DESPATCH REFRIGERATOR LINE**

CHICAGO, NEW YORK AND BOSTON REFRIGERATOR CO.

Form 124

J. E. HENDERSON, Agent
 200 North W. St., New York

J. E. HENDERSON, Agent
 200 North W. St., New York

J. E. HENDERSON, Agent
 200 North W. St., New York

W. A. LALLY, General Agent
 Room 202, 181 Quincy St., Chicago

C. E. GOSPEL, Pres. and Gen. Mgr.
 Room 202, 181 Quincy St., Chicago

THIS SHIPPING ORDER must be legibly filled in, in full, in duplicate, and retained by the Agent.

Shipper's No.

Agent's No. **17448**

RECEIVE, subject to the classification and tariffs in effect on the date of issue of this Shipping Order at

CHICAGO, ILL. **APRIL 24th 1922** From **MCWORTH REFRIGERATING COMPANY**
 The property described herein, in accordance with order, except as noted (contents and condition of contents of packages unknown), marked, weighed and delivered as indicated below, which said Comptroller agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on bills lading) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight is

Rate in Cents per 100 Lbs.												If Special	If Special
1	2	3	4	5	6	7	8	9	10	11	12	per	per
13	14	15	16	17	18	19	20	21	22	23	24		
25	26	27	28	29	30	31	32	33	34	35	36		
37	38	39	40	41	42	43	44	45	46	47	48		
49	50	51	52	53	54	55	56	57	58	59	60		

(Mark additional—Mark for purposes of delivery.)

Consigned to **GOLDWORTH-STOCKWELL COMPANY**

Destination **BOSTON**

State of **MASS.** County of

Route **NYD 22-25-PATMOR-BSA Delivery**

Car Initial **NYD**

Car No. **1443**

No.	Description of articles and special marks	Weight (pounds)	Class No.	Class Rate	Other Charges	Remarks
100	PACKS EGGS	21,900				If charges are to be prepaid, write or stamp here, "To be Prepaid."
	INITIALLY TOLN TO PARAGUAY-EGGS-100					
	DO NOT WRITE CHARGES HEREON.					
	Permitted and approved by DISCOUNT					
	Comes, fillers and flats. On record					
	with the classification					
	No. 3082, Special Calendar No. 30,					
	United States, ex relations,					
	Chicago, New York & Boston Re-					
	frigerator Company, a Corporation,					
	vs. Appellant,					
	Interstate Commerce Commission.					

Page 215

Received \$
 to apply in prepayment
 of the charges on the
 property described
 herein.

Agent or Collector

For
 (The signature here appears
 subject only the amount prepaid.)

Charges Advanced:

Shipper

By Agent using duplicate and retain this shipping order
 and send other the duplicate bill of lading

144

pk

USE PENCIL AND CARBONS

GRAND TRUNK RAILWAY SYSTEM

CORRECTION ADVICE

Agent's Cite No.

37360

Agent's Pre. No.

Issued at

Blue Island

Jailed

Ill

State or
Previous

Apr. 26th

1922

Audit No.

Weighted from

Blue Island, Ill

To

Boston, Mass

W.A. and Get Pre. No.

2739

Apr. 23rd 1922

NYD 14413

Car No. and Initials

Originating Point

Chicago, Ill

Initials

C&NW

Full Routing from Originating Point to Destination

IHBGT-CV-B&A

Date Weight Manifested

1922

Carriage Deducted

Weighted

Gross

Tare

Allowed

Net

Weighted at

Date

1921

Freight

Carriage Charge

Commodity and Destination

GOLDSMITH STOCKWELL
Boston, Mass.

Description of Freight

400 cases EGGS 21200#

Weight—lbs.

99 1/2 210 94

Rate

Address

Prepaid

To Collect

Freight Received or Carriage

Freights of Weight

CORRECTED TO READ

To Description

icing charges at Chicago

Full Rating

New York Despatch Line

ACCOUNT OF

AUTHORITY

do

do

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do

do

do

do

do

CORRECTED TO READ

To (Destination)

Full Basting.

icing charges at Chicago

New York Despatch Line

AUTHORITY:

New York Despatch Line

[illegible]

Footballers of Weymouth

DIVISIONS READ		DIVISIONS AS CORRECTED		If any change in Surpass or at Special Bar, give Reference below	
Roads	Proportions	Roads	Proportions	Station	Amount
					\$
				If settled with shippers, consignees, or connecting line on corrected figures endorse below, opposite Signature "NO REFUND"	
				Received from the GRAND TRUNK RAILWAY SYSTEM Dollars and _____	
				Signature	Date
Total		Total		Station	16

Mr. [redacted] has examined this correction book and certifies to its correctness: have noted number in our records and have dealt with according to instructions

Please
 Forwarding Station
 Clerk
 S. Meyers, Clerk.
 Recycling Station

S. Meyers, Clerk.

Resolving Status

Agent..... O. A. Woodward Agent.

Agent..... O. A. Woodward Agent.

•

•

FOR AUDIT USE ONLY

Initials	D.R.		Month	Weight-lbs.	Freight	Advances	Prepaid	To Collect	Prepaid Return or Carriage
	Cancelled	Initials							
Examined	Correction Account		Forwarding Sta.						
			Receiving Sta.						

Date Checked by:

[illegible]

... by present authors

Minimum Wt. Checked by:

Estimated Checked by: _____

Approved:

(2-15)

... .. Auction of Securities

No. 3882. Special Calendar No. 30.

United States, ex relations,

Chicago, New York & Boston Re-

frigerator Company, a Corporation,

vs. Appellant.

Interstate Commerce Commission.

Page 216.

USE PEN AND CARBONS

GRAND TRUNK RAILWAY SYSTEM

(Form 89)
1916

CORRECTION ADVICE

37361

Agent's Cn No.

Audit No.

Received at	Blue Island	Station	Ill	State or Province	Apr. 26	Date	1922
Agent's Pro. No.	Blue Island	To	East Boston, Mass	W.B. and Out Pro. No.	2737	Date in full	Apr. 23 1922
Waybill from	Blue Island, Ill	Label Line	CM&STP RR	Full Routing from Originating Point to Destination	IHB-GT-CV-E&Q	Car No. and Initials	MRL
Originating Point	Chicago, Ill	Label Line	CM&STP RR	Date Waybill Received			

Weighted				Cartage Debited			
Gross				Cartage Charged			
Weighted at	Tare	Allowed	Net	Freight	Ad. charges	To Collect	Freight Received at Customer
Date	151						
Description of Freight				Weight—lbs.	Rate	Freight	Freight Received at Customer
Peter F. Quinn Sons				15,000	99¢	149 25	
care Boston Term.							
313 Bx Ply							
Refg. Co., East Boston				5400#	4.00	10 80	
Icing at Chgo					7¢	4 05	
Salt						14 85	
540#							

CORRECTED TO READ

To (Description)	Full Reading	Authority
minimum weight of poultry	15000	
do do	20000	199 00
do do	minimum	

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Received this day from CHICAGO. Station. 4/23/22.
to be switched to Fulton Mt. Cold Storage Co. J. H. White & Co.
ST-NYD.

Car MTN 8150.
Said to contain 313 bxs and 4 Edis Freez. Pktry Weight 15,000 pounds.
Consigned to Peter F. Quinn & Sons, care Boston Term. Cold Stge.
Destination East Boston, Mass.

upon which only switching rates published by this Company are charged. This Company does not assume any responsibility for count or condition of freight in said car.

5400# crushed ice and 240# salt furnished. Charge to consignee. Re-ice with 2000# crushed ice and 10% salt at Port Huron Tunnel and Coteau Jct. R

FULTON MOUNTAIN & COLD STORAGE. J. H. White
Shippers Signature. Agent, CHAS. RY.

This form of receipt of shipments in carload lots to be used and furnished shippers in cases where this Company received a switching charge only for services performed.

No. 3882, Special Calendar No. 30.
United States, ex rel.
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
vs. Appellant. Page 211.
Interstate Commerce Commission.

NEW YORK DESPATCH REFRIGERATOR LINE
NATIONAL DESPATCH REFRIGERATOR LINE
CHICAGO, NEW YORK AND BOSTON REFRIGERATOR CO.

C. A. COOPER, Pres. and Gen. Mgr.,
Room 803, 181 Quincy St., Chicago.

Agent's No. 17849

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NEW YORK DESPATCH REFRIGERATOR LINE NATIONAL DESPATCH REFRIGERATOR LINE

CHICAGO, NEW YORK AND BOSTON REFRIGERATOR CO.

C. R. COOPER,
President and General Manager

W. A. LALLY,
General Agent

W. A. LALLY,
General Agent



W. A. LALLY,
General Agent

E. E. JAMES,
Agent

E. E. JAMES,
Agent

TELEPHONE: WABASH (2000)
WABASH (2000)
WABASH (2000)

GENERAL OFFICES

CHICAGO April 25th 1902.

File #/A. 17848.

No. 3882, Special Calendar No. 30. }
United States, ex relations, }
Chicago, New York & Boston Re- }
frigerator Company, a Corporation, }
vs. Appellant, } Page 213.
Interstate Commerce Commission.

Mr. C. A. Woodward, Agent,
Grand Trunk Railway,
Blue Island, Ill.

Dear Sir:-

Please refer to Blue Island to Boston
express No. 7729 of April 23rd, covering NYD 14413.

This car was initially iced to capacity
at Chicago with 8000# of ice. Same was omitted from your billing.
Will you kindly have same billed at furnishing us with a copy of your
"correction?"

Yours truly,

C. R. COOPER.

END.

President & General Manager.

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JK

CHICAGO AND NORTH WESTERN RAILWAY CO.
ST. 296-1298. State St. O Wood St., CHICAGO. 4/22/22.

Received this day from Monarch Refrigerator Co. Acct Goldsmith Stockwell
to be switched to Grand Trunk.

Car N. Y. D. 14413.
Said to contain 400 Cases Eggs Weight 21,200 lbs.
Consigned to Goldsmith-Stockwell Co.
Destination Boston, Mass.

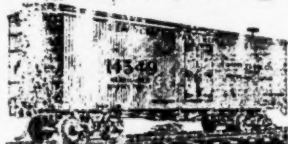
Via N.Y.-CT-CV via Palmer-B&A Delivery RR

upon which only switching charges are agreed upon by this company are charged
and this company will not assume any duty as a common carrier to safely deliver
such car at the destination stated, nor any responsibility for count or
condition of the freight in said car.

MONARCH REFRIGERATING COMPANY.
J. A. WALLACE, AGENT
CART. 47.
Per Dept.

INITIALLY TOED TO CAPACITY CASE FOR NO SALE. DO NOT RELOAD UNLESS TOLDED.

143
No. 3882, Special Calendar No. 30.
United States, ex relation,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
vs. Appellant, Page 214.
Interstate Commerce Commission.

[illegible]

R. G. HOLDEN, AGENT,
NEW YORK CITY

J. A. POMBYTH, AGENT.

COPIES
FOR THE MANAGER

W. A. LALLY,
GENERAL AGENT,
CHICAGO, ILL.

S. E. JAMES,

Control Ac.

*Memorandum of State is published by Initial Lines in effect from and to Points named below.

[illegible]

†In accordance with rules and requirements of Official Classification

[When shipments originate at points west of the west bank there is a from which no joint through rates are in effect and routed East via lines that have published tariff naming above rates.

OPoultry, Butter and Eggs, minimum 30,000 pounds; Cheese, minimum 30,000 pounds.

SHIPPERS WEST OF MISSISSIPPI RIVER--Your Station Agent will advise, on application, if Chicago or Mississippi River basis makes lowest through rate and war-bill accordingly.

Best time and service to New York, Jersey City, Brooklyn, Philadelphia, Albany, Binghamton, Elmira, Syracuse, Rochester, Buffalo, Boston, Providence, Worcester, Springfield, and other Eastern Points.

Route all shipments "Care New York Despatch Refrigerator Line."

⁵ For carloads. New York or National Dispatch cars can be obtained on order placed direct with railroad agents at origin shipping point, and notify this office date and from what railroad ordered.

Shippers would confer a favor upon the management by supplying for information concerning shipments in any quantity to points in New York, Pennsylvania and New Jersey, and points on the Grand Trunk Railway system not shown above.

181 Quincy Street, Chicago, Ill.
Telephone Wabash 9400-9412
Chicago, Ill., August 25, 1930. N. 3800

C. B. COOPER,
President and General Manager

No. 3882, Special Calendar No. 30.
United States, ex relatione,
Chicago, New York & Boston Re-
frigerator Company, a Corporation.

vs. Interstate Commerce Commission. } Page 182.

168 When a car passes to the Delaware, Lackawanna & Western at Black Rock, we get from our representative in New York, a notice to that effect. The paper shown me is such a notice.

The paper was offered in evidence as "Plaintiff's Exhibit 36" and is as follows:

(Here follows Plaintiff's Exhibit 36, marked page 169.)

170 We also get a report from the Black Rock agent. The paper shown me is a copy of such a report.

This paper was offered in evidence as "Plaintiff's Exhibit 37" and is as follows:

(Here follows Plaintiff's Exhibit 37, marked page 171.)

172 When the car arrives in New York or any other destination, we get another report from our agent. The paper shown me is such a report.

This paper was offered in evidence as "Plaintiff's Exhibit 38" and is as follows:

(Here follows Plaintiff's Exhibit 38, marked page 173.)

174 We have advices from the different stations, of the icing of all cars. We send out forms calling for that information. The paper shown me is an icing report on car 14277 at various stations along the line. When this paper leaves our office it is filled out up to and under the word "contents" at the top of the column. The entries following that column, that is, the entries regarding "Arrival," "Departure" and "Ice," are made by the icing station.

This paper was offered in evidence as "Plaintiff's Exhibit 41" and is as follows:

(Here follows Plaintiff's Exhibit 41, marked pages 175, 176, 177, 178, 179, and 180.)

181 The notice to shippers of daily service which petitioner undertakes to accomplish, is shown by circular number 64 in evidence. This circular is gotten out several times a year and is sent to all shippers and patrons. About three or four thousand are sent out in the course of a year, and this was done each year prior to Federal Control. The paper which is shown me is a rate sheet which we send out to shippers whenever the railroad rates are changed, and the same people receive them as receive circular number 64 above referred to.

This paper was now offered in evidence as "Plaintiff's Exhibit 43" and is as follows:

(Here follows Plaintiff's Exhibit 43, marked page 182.)

183 The papers now shown me are correspondence with respect to shipments moving in our cars, and are illustrative of the manner in which shipments are handled and attended to. The persons W. A. Lally, G. B. Gresham, C. R. Cooper, J. H. Kerr, and R. G. Holden, are officers and representatives of petitioner.

These papers were now offered in evidence as "Plaintiff's Exhibit 45" as illustrative of the manner of handling the business of petitioner, and are as follows:

(Here follows Plaintiff's Exhibit 45, marked pages 184, 185, 186, 187, 188, and 189.)

190 Grand Trunk Railway System,
 112 West Adams St.,
 Chicago, Ill.

June 5th, 1922.

G-19-124.

Mr. W. A. Lally,
General Agent N. Y. D.,
181 Quincy St., Chicago.

DEAR SIR:

W. G. Howard & Co., Chicago—Dressed Poultry.

Under date of Jan. 23rd, W. G. Howard & Co., Chicago shipped 200 boxes dressed poultry to their order, London, England, notify Kerr Bros. via New York, on Roth's contract 619, billing inland charges prepaid to New York.

The Lehigh Valley have billed us with \$8.40 to cover lighterage on this shipment. We issued bill under date of February 3rd, copy attached, and wrote W. G. Howard & Co., 229 No. Wells St., Chicago, requesting them to favor us with check for the amount. Again wrote them under date of April 29th, but so far have received no acknowledgment of our letters or check in payment.

We are being pressed by the manager of lighterage and foreign freight department, Lehigh Valley at New York for settlement of this outstanding. Will you kindly take up with shippers and endeavor to secure check in payment?

Yours truly,

(Signed)

C. A. GORMALY,
Foreign Freight Agent.

CAG/M.

TELEGRAM

THE POSTAL REGULATORY COMMISSION, UNITED STATES DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, D.C. 20535

SEND the following Telegram, subject to the terms on back hereof, which are hereby agreed to.

Chicago, March 26th, 1918.

To

(Street and No.)

(Place)

C. B. Gresham, Agent,
NYD Line, 334 Railway Exch Bldg.,
Kansas City, Mo.

We delivered ~~Chas~~ ^{Chas} ~~two~~ ^{two} cars on twenty second five cars on
twenty fourth carded Kansas City.

2:30 PM,

C. R. COVER,

No. 3983, Special Calendar No. 30.

United States, or relations,

Chicago, New York & Boston Re-

Refrigerator Company, a Corporation.

Appellant,

700

Page 184.

POSTAL TELEGRAPH - COMMERCIAL CABLES

CLARENCE H. MANNING, PRESIDENT

SERVICE DESIRED	
DAY LETTER	NIGHT TELEGRAM
<small>The above rates are in U.S. dollars and are subject to change without notice. For full rates and conditions of service, see the back of this blank.</small>	

TELEGRAM

THE POSTAL TELEGRAPH-CABLE COMPANY (INCORPORATED) TRANSMITS AND DELIVERS THIS MESSAGE SUBJECT TO THE TERMS AND CONDITIONS PRINTED ON THE BACK OF THIS BLANK.

RECEIVED'S NUMBER	CHECK
TIME PAID	STANDARD TIME

SEND the following Telegram, subject to the terms on back hereof, which are hereby agreed to.

Kansas City, Mo., March 26th, 1912

To 10:51 AM '12
(Street and No.)
(Place) C. B. Cooper,
181 Quincy St.,
Chicago, Ill.

Empty refrigerators not received here on C&STP. Needed badly.
Hurry cars to destination.

G. B. Creshaw.

No. 3882, Special Calendar No. 30.
United States ex rel. Milne,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

vs.
Interstate Commerce Commission.

Page 186.

[Handwritten signatures and initials]
OK

Chicago, March 27th, 1916.

File W/4-145.

New York Dispatch Line,
181 Quincy St.,
Chicago, Ill.

Referring to phone conversation of date. As per our request will you please arrange to furnish two refrigerator cars covered by my order

No. 142 billed to Calwehn, Iowa., for loading to Boston. Kindly advise K2 numbers of cars delivered and arrange for prompt delivery.

No. 3892, Special Calendar No. 30.
United States, ex relations,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

vs.
Interstate Commerce Commission.

J. A. BROWN,
C. G. W. Railroad.

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113
OK.

ILLINOIS CENTRAL RAILROAD COMPANY.

Chicago, March 28th, 1918.

Refer Order PL-832.

No. 3882, Special Calendar No. 30.

United States, ex relations,

Chicago, New York & Boston Re-

frigerator Company, a Corporation,

Appellant,

vs.

Interstate Commerce Commission.

Confirming phone ever date. Please deliver via the Belt at Hawthorne

3 NYBEL refrigerator cars carded Dubuque, Ia., for prospective return

loading via the Grand trunk. These cars are badly needed and we will

appreciate it if you will do all possible to expedite delivery.

Page 187.

Yours truly,

J. F. PORTERFIELD.

116 Ph

Chicago, March 27th, 1918.

No. 3682, Special Calendar No. 30.

United States, ex relatione,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

J. H. Kerr,

CSA, NYD Line,

181 Quincy St., Chicago.

vs.

Interstate Commerce Commission.

Page 188.

Please deliver us 5 NYD refrigerators at once billed Omaha, Neb., for
return dairy loading via your line, cars to be in first class condition
for dairy loading. H 131.

Phone conversation of to-day with Mr. Belanger.

J. R. Pickering, CRISP PR.

117 OK

NEW YORK DESPATCH REFRIGERATOR LINE NATIONAL DESPATCH REFRIGERATOR LINE

CHICAGO, NEW YORK AND BOSTON REFRIGERATOR CO.

C. H. COOPER
PRESIDENT AND GENERAL MANAGER
GEO. H. COURTEMANCHE
SECRETARY AND TREASURER
SUITE 808 S. 181 QUINCY STREET



W. A. LADDY
GENERAL AGENT
E. E. JAMES
AGENT
E. J. BELANGER
AGENT
TELEPHONE WARREN
BANK
BANK
BANK
BANK

GENERAL OFFICES

CHICAGO June 7th, 1922.

No. 3882, Special Calendar No. 30.
United States, ex relations,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,
vs.
Interstate Commerce Commission.

File No. 479-V.

Page 189.

Mr. C. A. Gormally, F. R. A.
Grand Trunk Western Lines,
Chicago, Ill.

Dear Sir:-

In accordance with your request
of June 5th, file G-19-124, I am sending you herewith W. C. Howard
& Co's check for \$3.40 to cover the lighters on this shipment.

Please be good enough to have
bill dated and receipted and returned to me, and oblige,

Yours truly,

W. A. LADDY

General Agent.

WAL/LW.

118

PK

POSTAL TELEGRAPH - COMMERCIAL CABLES

CLASS OF SERVICE DESIRED -
 FAST BY TELEGRAPH
 DAY LETTER
 NIGHT TELEGRAM
 NIGHT LETTERGRAM
 The sender and addressee must be named in full and the message must be written in plain English.

TELEGRAM

THE POSTAL TELEGRAPH-CABLE COMPANY (INCORPORATED) TRANSMITS AND DELIVERS THIS MESSAGE SUBJECT TO THE TERMS AND CONDITIONS PRINTED ON THE BACK OF THIS BLANK.

RECEIVER'S NUMBER
 CHECK
 TIME PAID
 STANDARD TIME

SEND the following Telegram, subject to the terms on back hereof, which are hereby agreed to.

Form 1

To Chicago, Ill., July 26th 1921
 (Street and No.)
 (Place) Charge to CRYER CC.

E. C. Harrison, Agent,
1162 Chicago, 6 Harrison St.,
New York, N. Y.

NYD 1162 Chicago July 26th now billed notify Engle Company.

This is your authority see shipment delivered. W. Otis, 172

Dane St. We hold authority. Advise.

3:45 PM.

C. B. COOPER,
No. 3802, Special Calendar No. 30,
United States ex Relatone,
Chicago-New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

vs.
Interstate Commerce Commission.

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POSTAL TELEGRAPH - COMMERCIAL CABLES

CLARENCE H. MANN, PRESIDENT

TELEGRAM

CLASS OF SERVICE DESIRED

FAST DAY TELEGRAM

DAY LETTER

NIGHT TELEGRAM

NIGHT LETTER

To be sent by night letter, subject to the provisions of the regulations governing the service.

RECEIVER'S NUMBER

CHECK

TIME FILED

STANDARD TIME

THE POSTAL TELEGRAPH-CABLE COMPANY, INCORPORATED, TRANSMITS AND DELIVERS THIS MESSAGE SUBJECT TO THE TERMS AND CONDITIONS PRINTED ON THE BACK OF THIS BLANK

SEND the following Telegram, subject to the terms on back hereof, which are hereby agreed to.

To EN New York, NY 11:24 AM 30th. 1921 July 30th AM 10:37. 192

(Street and No.)

(Place) C. R. Cooper, Pres. Cent'l Mgr.,

NYD Line, 161 Quincy St.,

Chicago, Ill.

NYD 1102 being delivered to B. W. Otis surrendered bill of

lading to-day.

R. G. Holden.

No. 3882. Special Calendar No. 30.

United States, ex relations,

Chicago, New York & Boston Re-

frigerator Company, a Corporation,

Appellant,

vs.

Interstate Commerce Commission.

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POSTAL TELEGRAPH - COMMERCIAL CABLES

CLARENCE H. MURRAY, PRESIDENT

TELEGRAM

THE POSTAL TELEGRAPH CABLE COMPANY, INCORPORATED
TRANSMITS AND DELIVERS THIS MESSAGE SUBJECT TO THE
TERMS AND CONDITIONS PRINTED ON THE BACK OF THIS BLANK

CLASS OF SERVICE DESIRED	
FAST DAY TELEGRAM	
DAY LETTER	
NIGHT TELEGRAM	
NIGHT LETTERGRAM	
The sender and addressee are responsible for the accuracy of the message and for the payment of the charges thereon.	

RECEIVED'S NUMBER	
CHECK	
TIME FILED	
STANDARD TIME	

SEND the following Telegram, subject to the terms on back hereof, which are hereby agreed to.

To FN New York, NY 10:23 AM 12th, 1921 Aug. 12, AM 9:48, 192

(Street and No.)

(Place) C. P. Cooper, Pres. & Gen'l Mgr.
New York Despatch Refrigerator Line,
161 Quincy St., Chicago, Ill.

Chgo 36767 Esqs Frighton, Iowa, 9th, consigned Murray-Halpern

New York. Protect high delivery regardless of routing on
loading. Advise quick.

C. G. Holder,
No. 3882 Special Calendar No. 30.
United States ex relations,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,
vs.
Interstate Commerce Commission.

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GRAND TRUNK RAILWAY SYSTEM

TELEGRAM

BE BRIEF

~~SECRET~~

Chicago, Aug. 12th, 1921.

S. L. Trusler, Supt. Term.,
Grand Trunk Railway,
Port Huron, Mich.

CB&Q 36767 Eggs Kankakee last night now billed St. Johns Park
delivery, New York Central. Divert to LV Pier 34. Advise.
If passed follow up.

10:45 AM.

C. R. COOPER.

No. 3882, Special Calendar No. 30.

United States, ex relatione,
Chicago, New York & Boston Re-
frigerator Company, a Corporation,
Appellant,

vs.

Interstate Commerce Commission.

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GRAND TUNK RAILWAY SYSTEM

BLACK RO CK N.Y. APRIL 25 1918.

Initial	Car No	D ate	W B	From	To	Weight	Commodity	Delivered Road	Date	Time
NY D	14277			Blue Island	Jersey City		Eggs	DLW	4/25/18	7 A.M.

Refer to 37

No.3882,Special Calendar No.30.
 United States,ex relations,
 Chicago,New York & Boston Re-
 frigerator Company,a Corporation,
 Appellant,
 vs.
 Interstate Commerce Commission. } Page 171.

Train 88 Arrived at Port Erie 4/25 4 A.M.
 ars delivered to D.L. 1& W. 4/25 7 A.M.

New York Despatch Refrigerator Line National Despatch Refrigerator Line

CHICAGO, NEW YORK AND BOSTON REFRIGERATOR CO.

REPORT OF CARS OF THIS COMPANY

Arrivals at New York and Vicinity April 27th 1918

Pasting

Station

192

Include all

New York Despatch Refrigerator Line Cars, 901 to 1200
New York Despatch Refrigerator Line Cars, 2000 to 4362
New York Despatch Refrigerator Line Cars, 13062 to 14668
National Despatch Refrigerator Line Cars, 7601 to 7607

SHOW EAST AND WEST BOUND CARS SEPARATELY

ROAD	CAR NUM AND INITIALS	LOADED FROM	Destination	CONSIGNEE	Com'ty	FORWARDING DATE TRAIN TIME	REMARKS
	14277 NYD	Iowa City	Jersey City	GA&PTCO	Siding	Penna RR 7:55 AM	
<p>No. 3882. Special Calendar No. 30. United States, ex relatione, Chicago, New York & Boston Re- frigerator Company, a Corporation, Appellant, vs. Interstate Commerce Commission.</p>							<p>Page 173.</p>

Pluffe No. 38.

4

102

New York Despatch Refrigerator Line National Despatch Refrigerator Line

Chicago, New York & Boston Refrigerator Co.

Agent at NEW YORK Station on P. R. R. R. R.

Please report by first mail, as per headings below, on freight way-billed via these lines passing your Station.

19-18

WAY-BILL		CAR		TRAIN No.	FROM	DESTINATION	CONTENTS			TIME						ICE		SALT
DATE	No.	No.	INITIALS				P.	B.	E.	ARRIVAL			DEPARTURE			Amount in Car on Arrival (Estimated)	Amount Added	Amount Added
										DATE	HOUR	A. M. P. M.	DATE	HOUR	A. M. P. M.			
Apr 23	3458	14277	NYD	88	Blue Island	Kearney Jet.			E	4 27	7 55	XX	4 23	8 50		None	None	None
<p>No. 3882, Special Calendar No. 30. United States, ex relations, Chicago, New York & Boston Re- frigerator Company, a Corporation, Appellant, vs. Interstate Commerce Commission.</p> <p>Page 175.</p>																		

•IT WILL BE UNNECESSARY TO RE-ICE CARS WHEN THEY REQUIRE LESS THAN 1,000 LBS. TO MAKE UP QUANTITY CALLED FOR IN ICING INSTRUCTIONS No.

AGENTS AT ICING OR JUNCTION STATIONS EAST OF CHICAGO WILL PLEASE ADD SUCH CARS AS ARE NOT SHOWN HEREON.

CONDITION

What was condition of ice? Answer

Was waste pipe probed and free from stoppage? Answer

Was there any leakage or overflow? Please state where, cause of same, or if in good condition. Answer

Please report by letter promptly any damage to property to your Freight Claim Agent and to

C. R. COOPER, PRES. AND GEN'L MGR.,
181 QUINCY STREET CHICAGO, ILL.

New York Despatch Refrigerator Line National Despatch Refrigerator Line

Chicago, New York & Boston Refrigerator Co.

Agent at PORT MONROE TUNNEL Station on GRAND TRUNK R. R.

Please report by first mail, as per headings below, on freight way-billed via these lines passing your Station.

19 18

WAY-BILL			CAR		TRAIN No.	FROM	DESTINATION	CONTENTS	TIME						*ICE		SALT
Date	No.	No.	INITIALS	ARRIVAL					DEPARTURE			Amount in Car on Arrival (Estimated)	Amount Added	Amount Added			
				DATE	HOUR	A. M. P. M.	DATE	HOUR	A. M. P. M.								
Apr. 23	3458	14277	ASB	88	Blue Island	Kearney Jct	E	4	24	12 PM	4	34	2 PM	None	None	None	
No. 3882, Special Calendar No. 30. United States, ex relations, Chicago, New York & Boston Re- frigerator Company, a Corporation, Appellant, vs. Interstate Commerce Commission.																	
Page 176.																	
Kc																	

*IT WILL BE UNNECESSARY TO RE-ICE CARS WHEN THEY REQUIRE LESS THAN 1,000 LBS. TO MAKE UP QUANTITY CALLED FOR IN ICING INSTRUCTIONS No.

AGENTS AT ICING OR JUNCTION STATIONS EAST OF CHICAGO WILL PLEASE ADD SUCH CARS AS ARE NOT SHOWN HEREON.

CONDITION

What was condition of ice? Answer

Was waste pipe probed and free from stoppage? Answer

Was there any leakage or overflow? Please state where, cause of same, or if in good condition. Answer

Please report by letter promptly any damage to property to your Freight Claim Agent and to

C. R. GOOPER, PRES. AND GEN'L MGR.,
181 QUINCY STREET CHICAGO, ILL.

105

New York Despatch Refrigerator Line National Despatch Refrigerator Line

Chicago, New York & Boston Refrigerator Co.

Agent at EAST BUFFALO Station on D. L. & W. R. R.

Please report by first mail, as per headings below, on freight way-billed via these lines passing your Station.

19 18

WAY-BILL		CAR		TRAIN No.	FROM	DESTINATION	CONTENTS	TIME						•ICE		SALT
DATE	NO.	NO.	INITIALS				P. V. E.	ARRIVAL			DEPARTURE			Amount in Car on Arrival (Estimated)	Amount Added	Amount Added
								DATE	HOUR	A. M. P. M.	DATE	HOUR	A. M. P. M.			
Apr. 23	3458	14277	NYD	88	Blue Island	Kearney Jct.	E	4 25	7	AM	4 25	10	AM	None	None	None
<p>No. 3882. Special Calendar No. 30. United States, ex relatione, Chicago, New York & Boston Refrigerator Company, a Corporation, Appellant, vs. Interstate Commerce Commission.</p> <p style="text-align: right;">Page 177.</p>																

•IT WILL BE UNNECESSARY TO RE-ICE CARS WHEN THEY REQUIRE LESS THAN 1,000 LBS. TO MAKE UP QUANTITY CALLED FOR IN ICING INSTRUCTIONS No.

AGENTS AT ICING OR JUNCTION STATIONS EAST OF CHICAGO WILL PLEASE ADD SUCH CARS AS ARE NOT SHOWN HEREON.

CONDITION

What was condition of ice? Answer

Was waste pipe probed and free from stoppage? Answer

Was there any leakage or overflow? Please state where, cause of same, or if in good condition. Answer

Please report by letter promptly any damage to property to your Freight Claim Agent and to

C. R. COOPER, PRES. AND GEN'L MGR.,
181 QUINCY STREET CHICAGO, ILL.

New York Despatch Refrigerator Line National Despatch Refrigerator Line

Chicago, New York & Boston Refrigerator Co.

Agent at GOULDSBORO Station on D. L. & W. R. R.

Please report by first mail, as per headings below, on freight way-billed via these lines passing your Station.

19 18

WAY-BILL		CAR		TRAIN No.	FROM	DESTINATION	CONTENTS			TIME						ICE		SALT
DATE	NO.	NO.	INITIALS				P.	D.	E.	ARRIVAL			DEPARTURE			Amount in Car on Arrival [Estimated]	Amount Added	
Apr. 23	3458	14277		NYD 88	Blue Island	Kearney Jet.			E	4	27	5 PM	4	27	7 PM	None	None	None
<p>No. 3882, Special Calendar No. 30. United States, ex relatione, Chicago, New York & Boston Refrigerator Company, a Corporation, Appellant, vs. Interstate Commerce Commission.</p> <p style="text-align: right;">Page 178.</p>																		

IT WILL BE UNNECESSARY TO RE-ICE CARS WHEN THEY REQUIRE LESS THAN 1,000 LBS. TO MAKE UP QUANTITY CALLED FOR IN ICING INSTRUCTIONS No. _____

AGENTS AT ICING OR JUNCTION STATIONS EAST OF CHICAGO WILL PLEASE ADD SUCH CARS AS ARE NOT SHOWN HEREON.

CONDITION

What was condition of ice? Answer _____

Was waste pipe probed and free from stoppage? Answer _____

Was there any leakage or overflow? Please state where, cause of same, or if in good condition. Answer _____

Please report by letter promptly any damage to property to your Freight Claim Agent and to

C. R. COOPER, PRES. AND GEN'L MGR.,
181 QUINCY STREET CHICAGO, ILL.

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New York Despatch Refrigerator Line National Despatch Refrigerator Line

Chicago, New York & Boston Refrigerator Co.

Agent at HOBOKEN, N. J. Station on D. L. & W. R. R.

Please report by first mail, as per headings below, on freight way-billed via these lines passing your Station.

19-18

WAY-BILL		CAR		TRAIN No.	FROM	DESTINATION	CONTENTS			TIME						PRICE		SALT
DATE	No.	No.	INITIALS				P.	S.	E.	ARRIVAL			DEPARTURE			Amount in Car (see Arrivals)	Amount Added	Amount Added
4 23	3458	14277	NYD	88	Blue Island	Kearney Jct.			E	4 27		5 AM				None	None	
<p>No. 3882. Special Calendar No. 30. United States, ex relatione, Chicago, New York & Boston Re- frigerator Company, a Corporation, Appellant, vs. Interstate Commerce Commission.</p> <p>Page 179.</p>																		

• IT WILL BE UNNECESSARY TO RE-ICE CARS WHEN THEY REQUIRE LESS THAN 1,000 LBS. TO MAKE UP QUANTITY CALLED FOR IN ICING INSTRUCTIONS No.

AGENTS AT ICING OR JUNCTION STATIONS EAST OF CHICAGO WILL PLEASE ADD SUCH CARS AS ARE NOT SHOWN HEREON.

CONDITION

What was condition of ice? Answer _____
Was waste pipe probed and free from stoppage? Answer _____
Was there any leakage or overflow? Please state where, cause of same, or if in good condition. Answer _____

Please report by letter promptly any damage to property to your Freight Claim Agent and to

C. R. COOPER, PRES. AND GEN'L MGR.,
101 QUINCY STREET CHICAGO, ILL.

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New York Despatch Refrigerator Line National Despatch Refrigerator Line

Chicago, New York & Boston Refrigerator Co.

Form 19

Agent at _____ FILE COPY _____ Station on _____ R. R.

Please report by first mail, as per headings below, on freight way-billed via these lines passing your Station.

19—18

WAY-BILL		CAR		TRAIN No.	FROM	DESTINATION	CONTENTS			TIME						ICE		SALT
DATE	NO.	NO.	INITIALS				P.	B.	E.	ARRIVAL			DEPARTURE			Amount in Car (Estimated)	Amount Added	
									DATE	HOUR	A. M. P. M.	DATE	HOUR	A. M. P. M.				
Apr 28	3458	14277	NYD	58	Blue Island	Kearney Jet		E				4	23	5	50 PM	X	Weight	24, 062#
No. 3282, Special Calendar No. 30. United States, ex relations, Chicago, New York & Boston Re- frigerator Company, a Corporation, Appellant, vs. Interstate Commerce Commission.							Page 180.			E. I. R.						Ch		

• IT WILL BE UNNECESSARY TO RE-ICE CARS WHEN THEY REQUIRE LESS THAN 1,000 LBS. TO MAKE UP QUANTITY CALLED FOR IN ICING INSTRUCTIONS No. _____

AGENTS AT ICING OR JUNCTION STATIONS EAST OF CHICAGO WILL PLEASE ADD SUCH CARS AS ARE NOT SHOWN HEREON.

CONDITION

What was condition of ice? Answer: _____

Was waste pipe probed and free from stoppage? Answer: _____

Was there any leakage or overflow? Please state where, cause of same, or if in good condition. Answer: _____

Please report by letter promptly any damage to property to your Freight Claim Agent and to

C. R. COOPER, PRES. AND GEN'L MGR.,
181 QUINCY STREET CHICAGO, ILL.

191 Grand Trunk Railway System,
 Western Lines.

Chicago, February 3rd, 1922.

Mr. W. G. Howard & Co.,
229 No. Wells St., Chicago:

#538.

Via LV and White Star Line.

For Prepayment of Lighterage charges as follows:

Car.	Destination.	Bill lading number.	Date B/L.	Weight.	Amt.
NYD 14234..	Liverpool, Eng...	#236	1/23	13,800	....

To lighterage on 200 boxes dressed poultry..... \$8.40

SS "Vedic" Pr. 60 N. R. N. Y.

192 A. T. Ullmann Company, Inc.,
 231 No. Wells St.,
 Chicago, Ill.

Chicago, July 29th, 1921.

Mr. W. A. Lally,
General Agent New York Dispatch Refg. Line,
181 Quincy St., Chicago, Ill.

DEAR SIR:

On July 26th we shipped NYD 1182 containing 650 boxes of poultry to the Engel Company, New York City, N. Y. via Grand Trunk—NYD—D. L. & W. delivery, shippers' order bill of lading having consigned same to the order of A. T. Ullmann Co., Not Inc., New York City, N. Y., notify the Engel Company, New York City, N. Y.

This letter will be your authority to deliver said car to B. W. Otis & Co., 173 Duane St., New York City, N. Y. upon delivery of bill of lading. We ask that you kindly take prompt action in notifying New York Headquarters of this change.

Yours very truly,

A. T. ULLMAN CO., Not Inc.

P. S.—We have advised our bank to-day by letter to advise their corresponding bank to deliver draft to which bill-lading is attached to B. W. Otis & Co., upon payment of draft, and they in turn will surrender bill-lading when taking delivery.

(Here follow reproductions of pages 193-216, inclusive.)

217 When a car comes from the West to Chicago as a destination it is sometimes sent to the East by direction of the shipper. That is called a reconsignment. In such a case we issue to the shipper a bill of lading for the goods and if the freight is prepaid it is prepaid to us, and we turn it over to the railroad company. The car is then switched and placed at our disposal on the tracks of the Grand Trunk Western Railroad Company. The car moves out of Chicago under our direction and upon the bill of lading issued by us.

Upon cross examination the witness testified as follows: When I speak of distributing these cars I mean that petitioner orders the cars carded to the Western lines, and the Grand Trunk Western makes delivery. It is advice received from the railroad companies that enable us to keep records of the movements of our cars. The Grand Trunk agent, under our direction makes out the waybill for the car. This bill goes to the conductor and the car moves under the waybill. It is a railroad record. The original waybill follows the car through to destination and is retained by the delivering carrier, but the Grand Trunk retains a copy. A copy is also furnished the petitioner for its information. The waybill contains the instructions as to what to do with the car. The petitioner has no man with the car. All shipments are billed on our form of waybill when they are routed in our care. That designates the routes on the railroad companies—the established routes.

During the guaranty period the petitioner's cars followed the same routes that they ordinarily followed. The rate sheet which we send out, "Plaintiff's Exhibit 43" is a compilation of excerpts from 218 tariffs filed by the railroad Companies and shows the freight rates between various points and not our charges. We make no charge to shippers except for loading cars on Chicago team tracks.

There was now offered in evidence as "Plaintiff's Exhibit 46" a certified copy of an order of the Interstate Commerce Commission "In the Matter of the Authorization of the Officers and Directors of the Grand Trunk Railway Company to hold the positions of officers and directors of more than one carrier." The application was filed December 22, 1921, and the order was made February 22, 1922. The testimony was offered for the purpose of showing that petitioner had been held, by the Commission to be a carrier by railroad. This certified copy is as follows:

219

PLT'FF's — 46.

Interstate Commerce Commission,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of application filed December 22, 1921, and of order of the Commission entered February 20, 1922, In the Matter of Authorization, Under Paragraph (12) of Section 20a of the Interstate Commerce Act, to

Hold the Positions of Officer or Director of more than one Carrier, the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 5th day of April, A. D. 1922.

[Seal of Interstate Commerce Commission.]

GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

220 Before the Interstate Commerce Commission.

Application of THE GRAND TRUNK RAILWAY COMPANY OF CANADA under Paragraph (12) of Section 20a of the Interstate Commerce Act on Behalf of Certain Persons for Permission to Hold at One and the Same Time Official Positions in Two or More Carrier Companies.

W. C. Chisholm,
Solicitor for Applicant.

Dated at Montreal, Can., this 19th December, 1921.

221 Before the Interstate Commerce Commission.

Application of THE GRAND TRUNK RAILWAY COMPANY OF CANADA under Paragraph (12) of Section 20a of the Interstate Commerce Act on Behalf of Certain Persons for Permission to Hold at One and the Same Time Official Positions in Two or More Carrier Companies.

(1) The Grand Trunk Railway Company of Canada presents this, its application to the Interstate Commerce Commission under paragraph (12) of Section 20a of the Interstate Commerce Act, on behalf of persons holding official positions (including that of Director) in The Grand Trunk Railway Company of Canada and in any of its affiliated or system companies within the United States for the purpose of securing the consent of the Commission for said persons to continue to hold, or to hold after December 31, 1921, such official position or positions in The Grand Trunk Railway Company of Canada and its affiliated lines in the United States, and in support thereof states:

222 (2) The Grand Trunk Railway System and Affiliated Lines are as under:

Grand Trunk Railway System:

The Grand Trunk Railway Company of Canada, in the United States.
 Grand Trunk Western Railway Company.
 The Grand Trunk Junction Railway Company.
 Detroit, Grand Haven and Milwaukee Railway Company.
 Toledo, Saginaw and Muskegon Railway Company.
 The Pontiac, Oxford and Northern Railroad Company.
 The Detroit & Huron Railway Company.
 International Bridge Company.
 St. Clair Tunnel Company.

The Affiliated Lines are:

Central Vermont Railway Company and its subsidiaries.
 The Detroit and Toledo Shore Line Railroad Company.
 Detroit Terminal Railroad Company.
 The Belt Railway Company of Chicago.
 Chicago and Western Indiana Railroad Company.
 Chicago, New York and Boston Refrigerator Company.

(3) The Grand Trunk Railway Company of Canada, in the United States leases and operates over the properties of the following Companies:

Atlantic and St. Lawrence Railroad Company.
 Portland Elevator Company.
 223 New England Elevator Company.
 The Champlain and St. Lawrence Railroad Company.
 The United States and Canada Railroad Company.
 Vermont and Province Line Railroad Company.
 Chicago, Detroit and Canada Grand Trunk Junction Railroad Company.
 Michigan Air Line Railway.
 Bay City Terminal Railway Company.

(4) The Grand Trunk Western includes the following Company whose property is operated under implied lease:

The Chicago and Kalamazoo Terminal Railroad Company.

(5) The Detroit, Grand Haven and Milwaukee Railway Company includes the following company whose property is operated under implied lease:

Grand Rapids Terminal Railroad Company.

(6) The subsidiaries of the Central Vermont Railway Company are as under:

Central Vermont Railway Company.
 Southern New England Railroad Corporation.
 Southern New England Railway Company.
 Bethel Granite Railway Company.
 Southern Vermont Railway Company.

(7) Atlantic and St. Lawrence Railroad Company owns a railroad from Portland, Me., to Island Pond, Vt., said railroad being
224 leased to and operated by the Grand Trunk Railway Company of Canada under a 999 year lease. The Grand Trunk Railway Company of Canada owns two shares, par value \$100 each, of Capital Stock of the Atlantic and St. Lawrence Railroad Company, out of a total issue of \$5,484,000. A Lessor Company making report to the Interstate Commerce Commission.

(8) Portland Elevator Company owns an elevator situate at Portland, Me., said elevator being leased to and operated by the Grand Trunk Railway Company of Canada in conjunction with the operation of the Atlantic and St. Lawrence Railroad. The Grand Trunk Railway Company of Canada owns all of the Capital Stock of the Portland Elevator Company. A Lessor Company which has not made annual reports to the Interstate Commerce Commission.

(9) New England Elevator Company owns an elevator situate at Portland, Me., said elevator being leased to and operated by the Grand Trunk Railway Company of Canada in conjunction with the operation of the Atlantic and St. Lawrence Railroad. The Grand Trunk Railway Company of Canada owns all of the Capital Stock of the New England Elevator Company. A Lessor Company which has not made an annual report to the Interstate Commerce Commission.

(10) Champlain and St. Lawrence Railroad Company owns the railroad between the Canadian International Boundary Line and Rouses Point, N. Y. The railroad is operated by the Grand Trunk
225 Railway Company of Canada under an implied lease. All of the Capital Stock of the Champlain and St. Lawrence Railroad Company is owned by the Grand Trunk Railway Company of Canada. A Lessor Company making annual report to the Interstate Commerce Commission.

(11) The United States and Canada Railroad Company owns the railroad between the Canadian International Boundary Line and Massena Springs, N. Y. The railroad is operated by the Grand Trunk Railway Company of Canada under an implied lease. The total outstanding stock is \$219,400, of which \$218,925 is owned by the Grand Trunk Railway Company of Canada. A Lessor Company making annual report to the Interstate Commerce Commission.

(12) Vermont and Province Line Railroad Company owns the railroad between the Canadian International Boundary Line and Alburg Junction, Vt. The railroad is operated by the Grand Trunk Railway Company of Canada under an implied lease. The entire Capital Stock of the Vermont and Province Line Railroad is owned by the Grand Trunk Railway Company of Canada. A Lessor Company making annual report to the Interstate Commerce Commission.

(13) International Bridge Company owns a bridge, with the railroad tracks thereon, located between Fort Erie, Ontario, and
226 Black Rock, Buffalo, N. Y., over which bridge the Grand Trunk Railway Company of Canada operates its trains in common with and under the same terms and conditions as the Michigan Central, Pere Marquette and Wabash Railroads. The

Capital Stock of the Bridge Company is \$1,500,000, of which the Grand Trunk Railway Company of Canada owns \$1,496,500, the remainder being owned by the Directors. Makes annual report to the Interstate Commerce Commission.

(14) St. Clair Tunnel Company owns the tunnel and railway under the St. Clair River from Sarnia, Ontario, to Port Huron, Mich. The railway, which is operated by the St. Clair Tunnel Company, forms the connection between the Grand Trunk Lines in Canada and the Grand Trunk System Lines West of the St. Clair and Detroit Rivers. The entire Capital Stock of the Tunnel Company is owned by the Grand Trunk Railway Company of Canada. Makes annual report to the Interstate Commerce Commission.

(15) Grand Trunk Western Railway Company owns and operates the railway, the main line of which runs from Port Huron, Mich., to Chicago, Ill. The entire Capital Stock of the Company is owned by the Grand Trunk Railway Company of Canada. Makes annual report to the Interstate Commerce Commission.

(16) The Grand Trunk Junction Railway Company is a holding Company only. Its railway property is owned and operated by the Grand Trunk Western Railway Company. The Grand

227 Trunk Junction Railway Company owns 1/5th of the Stock of the Chicago and Western Indiana Railroad Company, 1/12th of the Stock of the Belt Railway Company of Chicago and the right to receive in 1931 the sum of \$1,300,000 from the Atchison, Topeka and Santa Fe Railway Company for what is known as the State Street property, Chicago. The entire Capital Stock of the Grand Trunk Junction Railway Company is owned by the Grand Trunk Railway Company of Canada. Does not make annual reports to the Interstate Commerce Commission.

(17) The Chicago and Kalamazoo Terminal Railroad Company owns the terminal facilities at Kalamazoo, Mich. The said facilities are operated by the Grand Trunk Western Railway Company under an implied lease. The entire Capital Stock of the Chicago and Kalamazoo Terminal Railroad Company is owned by the Grand Trunk Western Railway Company. A Lessor Company not making report to the Interstate Commerce Commission.

(18) The Pontiac, Oxford and Northern Railroad Company owns and operates the railroad between Pontiac, Mich. and Caseville, Mich. The Capital Stock of the Company is \$1,000,000, of which the Grand Trunk Western Railway Company owns \$999,400 and the remainder is owned by six Directors personally. Makes annual report to the Interstate Commerce Commission.

(19) The Detroit & Huron Railway Company owns and operates the railway from Cass City, Mich., to Bad Axe, Mich. The
228 entire Capital Stock of the Company is owned by the Grand Trunk Western Railway Company. Makes annual report to the Interstate Commerce Commission.

(20) Detroit, Grand Haven and Milwaukee Railway Company owns and operates the railway from Detroit, Mich., to Grand Haven, Mich. The entire Capital Stock of the Company is owned by the

Grand Trunk Railway Company of Canada. Makes annual report to the Interstate Commerce Commission.

(21) Grand Rapids Terminal Railroad Company owns terminal facilities in the City of Grand Rapids, Mich. The property is operated by the Detroit, Grand Haven and Milwaukee Railway Company under lease. The entire Capital Stock of the Grand Rapids Terminal Railroad Company is owned by the Grand Trunk Railway Company of Canada. A Lessor Company not making report to the Interstate Commerce Commission.

(22) Toledo, Saginaw and Muskegon Railway Company owns and operates the railway from Mukegon to Ashley, Mich., and has track-age rights over the Ann Arbor Railroad Company from Ashley to Owosso, Mich. The entire Capital Stock of the Company is owned by the Grand Trunk Railway Company of Canada. The Company makes annual reports to the Interstate Commerce Commission.

(23) Chicago, Detroit & Canada Grand Trunk Junction Railroad Company owns the railroad between Detroit, Mich., and Port Huron, Mich. The railroad is leased to and operated by the
229 Grand Trunk Railway Company of Canada, which Company owns 5,225 shares out of a total issue of 10,950 shares. A Lessor Company making reports to the Interstate Commerce Commission.

(24) Michigan Air Line Railway runs from Richmond, Mich., to Jackson, Mich. The railway is operated by the Grand Trunk Railway Company of Canada under an implied extension of a lease dated 10th December, 1881, for a term of twenty years. The entire Capital Stock of the Company is owned by the Grand Trunk Railway Company of Canada. A Lessor Company making reports to the Interstate Commerce Commission.

(25) Bay City Terminal Railway Company owns railway terminal facilities at Bay City, Mich. The entire Capital Stock of the Company is owned by the Grand Trunk Railway Company of Canada. The railway facilities are operated by the Grand Trunk Railway Company of Canada under an implied lease as a part of its operation of the Cincinnati, Saginaw & Mackinaw Railroad which is under lease to and operated by the said Grand Trunk Railway Company. A Lessor Company not making reports to the Interstate Commerce Commission.

(26) The Detroit and Toledo Shore Line Railroad Company owns and operates a railway between West Detroit, Mich., and Toledo, O.

The Grand Trunk Western Railway Company owns one-half
230 of the outstanding Capital Stock, the other half being owned by the Toledo, St. Louis & Western Railroad Company. Makes reports to the Interstate Commerce Commission.

(27) Detroit Terminal Railroad Company owns and operates freight terminals in and around the City of Detroit, Mich. The Grand Trunk Railway Company of Canada owns one-half of the outstanding Capital Stock; 25% is owned by the Michigan Central Railroad Company and 25% by the Lake Shore & Michigan Southern Railway Company. Makes reports to the Interstate Commerce Commission.

(28) Chicago, New York and Boston Refrigerator Company owns and operates a line of refrigerator cars over the Grand Trunk System Lines, the Central Vermont, Lehigh Valley and Delaware, Lackawanna and Western Railroads. The entire Capital Stock of the Company is owned by the Grand Trunk Railway Company of Canada. The Company does not make reports to the Interstate Commerce Commission.

(29) Central Vermont Railway Company is separately operated, but is controlled by the Grand Trunk Railway Company of Canada by virtue of the ownership of a majority of the outstanding stock. The total outstanding stock of the Central Vermont Railway Company is \$3,000,000 of which the Grand Trunk Railway Company of Canada owns \$2,191,100.

The Southern New England Railroad Corporation, Southern New England Railway Company, Bethel Granite Railway Company, and the Southern Vermont Railway Company are subsidiary Companies of the Central Vermont Railway Company.

231 (30) That all of the carrier properties in the United States hereinbefore referred to and collectively known as the Grand Trunk Railway System were constructed or acquired for the purpose of being operated as a system.

That system operation is necessary in the interest of economy, and of efficient, adequate and satisfactory public service.

That expeditious, efficient and economical through passenger and freight service is afforded by the operation of through trains over all of said lines of railway, effected primarily through the instrumentality of such common officers.

(31) That a further segregation of the operations of the Grand Trunk Railway System companies and a further selection of separate executive, operating and traffic officers will largely increase the outlay for salaries of officers, while under the present plan the salaries of the general officers of the Grand Trunk Railway System are apportioned to, and with minor exceptions charged against, the several System lines, which proportion is less than would be required to pay the full salaries of a separate force of officers for each company. There would also be an increase in other operating expenses and an unavoidable decrease in the effectiveness of System operation.

232 (32) That purchases of materials and supplies under the present plan of operation are made chiefly by the Grand Trunk Railway System for all Grand Trunk System lines at lower prices than any one of said system lines could itself secure such materials and supplies. That the system lines are given the benefit of the purchases at such favorable prices, such materials being charged by the Grand Trunk to the other system lines at the cost thereof to the Grand Trunk Railway System, plus the cost to the Grand Trunk Railway System of transporting and handling the same.

(33) That the rolling stock equipment of the several companies comprising the system are interchanged between the several companies.

panies of the system on an equitable basis of compensation according to the needs and requirements of the several parts of the system, and by this means equipment sufficient to the needs of the different parts is secured in a more efficient and economical manner than would be the case if each component part were required to provide for its own immediate or anticipated rolling stock requirements.

(34) That if each incorporated company comprising the system is required after December 31st, 1921, to have separate officers and directors, the unity of management and operation of the Grand Trunk Railway System lines will be impaired and the efficiency of management and operation reduced without any gain in public or private interest.

233 (35) The Grand Trunk Railway Company of Canada, owning as it does practically all of the capital stock and a majority of the securities of the Grand Trunk System Companies, there can be no possible conflict of interest between the official positions held by the same officers in the several system companies. The private interests to be protected are in all cases identical and the public interest will be served rather than prejudiced. That neither public nor private interests would be adversely affected by the same persons holding office in more than one of the Grand Trunk System Companies.

In regard to affiliated companies enumerated herein, the interests of the Grand Trunk Railway System therein were acquired and are now retained for the purpose of extending and developing a unified railroad system. It is in the public interest that the interest of the Grand Trunk Railway Company of Canada in such Companies be represented by persons familiar with the Grand Trunk Railway system as a whole, and in touch with the management of the Grand Trunk Railway Company of Canada which makes it necessary that officers or directors of the Grand Trunk Railway Company of Canada shall be able to retain their positions as such officers or directors while at the same time retaining their positions as
234 officers or directors of such other affiliated companies and for the same reason no proper private interest is adversely affected thereby.

(36) The persons named below hold positions as directors, or officers, in more than one of the said Grand Trunk Railway System or affiliated companies, and it is desirable in the public interest and in the interest of the stock and security holders of the Grand Trunk Railway Company and its System Companies, that they be permitted to hold said offices and positions after December 31, 1921, and that said persons or any other person duly selected to hold such offices and positions in one or more of said companies after December 31, 1921, should be authorized by this Commission so to do.

That there are set forth in this paragraph the names of all persons serving as directors or officers or holding official positions in more than one of the said Grand Trunk Railway System or affiliated companies, who have to do with the control of the policies, management and operation of the said properties.

That in addition to the names of the persons who control the policies, management and operation, of the properties, there
235 are set forth below the names of certain persons serving more than one of the said System or affiliated companies in subordinate official positions and who may possibly be considered, officers or occasionally perform the duties of officers within the purview and meaning of Paragraph (12) of Section 20a of the Interstate Commerce Act, and whose names are included for the purpose of protecting them against any possible claim that they are violating the said Act.

The names of the persons holding such official and subordinate positions with their official titles or designations are as follows:

Sir Joseph W. Flavelle, Bart.

Atlantic and St. Lawrence Railroad Company.....	Director.
Portland Elevator Company	do.
New England Elevator Company	do.
The Champlain and St. Lawrence Railroad Company.....	do.

E. L. Newcombe, K. C.

The Champlain and St. Lawrence Railroad Company.....	Director.
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Howard G. Kelley,

Director and President Grand Trunk Railway Company of Canada.

Atlantic and St. Lawrence Railroad Company.....	Director and President.
Portland Elevator Company	do.
New England Elevator Company	do.
The Champlain and St. Lawrence Railroad Company.....	do.
The United States and Canada Railroad Company.....	do.
Vermont and Province Line Railroad Company.....	do.
International Bridge Company.....	Owns one share of stock.
St. Clair Tunnel Company.....	do.
Grand Trunk Western Railway Company.....	do.
The Grand Trunk Junction Railway Company.....	do.
The Chicago and Kalamazoo Terminal Railroad Company.....	do.
The Pontiac, Oxford and Northern Railroad Company.....	Owns one share of stock.
The Detroit & Huron Railway Company.....	do.
Detroit, Grand Haven and Milwaukee Railway Company.....	do.
Grand Rapids Terminal Railroad Company.....	do.

Howard G. Kelley—*Continued.*

Toledo, Saginaw and Muskegon Railway Company.....	Director and President.
Chicago, Detroit and Canada Grand Trunk Junction Railroad Com- pany	do.
237 Michigan Airline Railway.....	Director and President.
Bay City Terminal Railway Company.....	do.
The Detroit and Toledo Shore Line Railroad Company.....	Director and Vice-President.
Detroit Terminal Railroad Company.....	Director.
The Belt Railway Company of Chicago.....	Director.
Chicago and Western Indiana Railroad Company.....	Director.
Central Vermont Railway Company.....	Director and Chairman of Board.
Southern New England Railroad Corporation.....	do.
Southern New England Railway Company.....	do.
Bethel Granite Railway Company.....	do.
Southern Vermont Railway Company.....	do.

J. N. Dupuis,

Director Grand Trunk Railway Company of Canada.

Atlantic and St. Lawrence Railroad Company.....	Director.
Portland Elevator Company.....	do.
New England Elevator Company.....	do.
The Champlain and St. Lawrence Railroad Company.....	do.

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A. J. Mitchell,

Director Grand Trunk Railway Company of Canada.

The Champlain and St. Lawrence Railroad Company.....	Director.
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Frank Scott,

Vice-President & Treasurer, Grand Trunk Railway Company of Canada.	
Atlantic and St. Lawrence Railroad Company.....	Director and Treasurer.
Portland Elevator Company.....	Director, Treasurer and Assistant Clerk.
New England Elevator Company.....	do.
The Champlain and St. Lawrence Railroad Company.....	Secretary and Treasurer.
The United States and Canada Railroad Company.....	Director, Secretary and Treasurer.
Vermont and Province Line Railroad Company.....	Director, Assistant Clerk and Treasurer.
International Bridge Company.....	Director and Treasurer. Owns one share of stock.
St. Clair Tunnel Company.....	do.
Grand Trunk Western Railway Company.....	Director, Vice-President and Treasurer.
The Grand Trunk Junction Railway Company.....	Director and Treasurer.
The Chicago and Kalamazoo Terminal Railroad Company.....	do.
The Pontiac, Oxford and Northern Railroad Company.....	do. (Owns one share of stock.)
The Detroit and Huron Railway Company.....	Treasurer.
Detroit, Grand Haven and Milwaukee Railway Company.....	Director, Vice-President and Treasurer.
239 Grand Rapids Terminal Railroad Company.....	Director and Treasurer.
Toledo, Saginaw and Muskegon Railway Company.....	Director and Treasurer.
Chicago, Detroit and Canada Grand Trunk Junction Railroad Company.....	do.
Michigan Airline Railway.....	do.
Bay City Terminal Railroad Company.....	do.
Detroit Terminal Railroad Company.....	Director.
Central Vermont Railway Company.....	Director and Vice-President.
Bethel Granite Railway Company.....	Director and Vice-President.
Central Vermont Transportation Company.....	Director.
Southern New England Railway Company.....	Director.
Southern New England Railway Corporation.....	Director.
Southern Vermont Railway Company.....	Director.

J. E. Dalrymple,

Vice-President Grand Trunk Railway Company of Canada.

Portland Elevator Company.....	Director.
New England Elevator Company.....	do.
United States and Canada Railroad Company.....	do.
Chicago, New York and Boston Refrigerator Company.....	Director and Vice-President.
Central Vermont Railway Company.....	Vice-President.

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W. D. Robb,

Vice-President Grand Trunk Railway Company of Canada.

Portland Elevator Company.....	Director and Vice-President.
New England Elevator Company.....	do.
The Champlain and St. Lawrence Railroad Company.....	Vice-President.
The United States and Canada Railroad Company.....	Director and Vice-President.
International Bridge Company.....	do. Owns 1 share of stock.
St. Clair Tunnel Company.....	do.
Grand Trunk Western Railway Company.....	do.
The Grand Trunk Junction Railway Company.....	do.
The Chicago and Kalamazoo Terminal Railroad Company.....	do.
The Pontiac, Oxford and Northern Railroad Company.....	do.
The Detroit and Huron Railway Company.....	do. Owns 1 share of stock.
Detroit, Grand Haven and Milwaukee Railway Company.....	Vice-President.
Grand Rapids Terminal Railroad Company.....	Director and Vice-President.
Toledo, Saginaw and Muskegon Railway Company.....	do.

Chicago, Detroit and Canada Grand Trunk Junction Railroad Com- pany	do.
Michigan Airline Railway	do.
Bay City Terminal Railway Co.	do.
241 The Detroit and Toledo Shore Line Railroad Company	Director.

J. M. Rosevear,

Comptroller Grand Trunk Railway Company of Canada.

Atlantic and St. Lawrence Railroad Company	General Auditor.
Grand Trunk Western Railway Company	Auditor.
The Grand Trunk Junction Railway Company	do.
The Chicago and Kalamazoo Terminal Railroad Company	do.
The Pontiac, Oxford and Northern Railroad Company	do.
The Detroit and Huron Railway Company	do.
Detroit, Grand Haven and Milwaukee Railway Company	do.
Grand Rapids Terminal Railroad Company	do.
Toledo, Saginaw and Muskegon Railway Company	do.
Chicago, Detroit and Canada Grand Trunk Junction Railroad Com- pany	do.
Michigan Airline Railway	do.
Bay City Terminal Railway Company	do.
The Detroit and Toledo Shore Line Railroad Company	Special Auditor.
Chicago, New York and Boston Refrigerator Company	Auditor.

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A. B. Atwater,

Assistant to President Grand Trunk Railway Company of Canada.

St. Clair Tunnel Company.....	Director.
Grand Trunk Western Railway Company.....	do.
The Grand Trunk Junction Railway Company.....	do.
The Chicago and Kalamazoo Terminal Railroad Company.....	do.
The Pontiac, Oxford and Northern Railroad Company.....	do.
The Detroit & Huron Railway Company.....	do.
Detroit, Grand Haven and Milwaukee Ry. Co.....	do.
Grand Rapids Terminal Railroad Company.....	do.
Toledo, Saginaw and Muskegon Railway Company.....	do.
Chicago, Detroit and Canada Grand Trunk Junction Railroad Com- pany	do.
Michigan Air Line Railway.....	do.
Bay City Terminal Railway Company.....	do.
The Detroit and Toledo Shore Railroad Company.....	do.
Detroit Terminal Railroad Company.....	Director and Vice-President.
Toledo Terminal Railroad Company.....	Director.

Owns 1 share of stock.

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H. E. Whittenberger,

General Manager Lines West of Detroit and St. Clair Rivers.

St. Clair Tunnel Company.....	Director.
Grand Trunk Western Railway Company.....	do.
The Chicago and Kalamazoo Terminal Railroad Company.....	do.
The Pontiac, Oxford and Northern Railroad Company.....	do.
Detroit, Grand Haven and Milwaukee Railway Company.....	do.

Owns 1 share of stock.

Chicago, Detroit and Canada Grand Trunk Junction Railroad Company do.
 Michigan Air Line Railway do.
 Bay City Terminal Railway Company do.

W. C. Tomkins,

Local Treasurer Grand Trunk Railway Company of Canada.

International Bridge Company Secretary.
 St. Clair Tunnel Company do.
 Grand Trunk Western Railway Secretary and Assistant Treasurer.
 The Grand Trunk Junction Railway Company Director, Secretary and Assistant Treasurer.
 The Chicago and Kalamazoo Terminal Railroad Company do.
 The Pontiac, Oxford and Northern Railroad Company do. Owns 1 share of stock.
 The Detroit & Huron Railway Company do.
 Detroit, Grand Haven and Milwaukee Railway Company do.
 244 Grand Rapids Terminal Railroad Company Director, Secretary and Assistant Treasurer.
 Toledo, Saginaw and Muskegon Railway Company Secretary and Assistant Treasurer.
 Chicago, Detroit and Canada Grand Trunk Junction Railroad Company do.
 Michigan Air Line Railway do.
 Bay City Terminal Railway Company Director, Secretary and Assistant Treasurer.
 The Detroit and Toledo Shore Line Railroad Company Secretary and Treasurer.
 Detroit Terminal Railroad Company Director and Treasurer.

F. L. C. Bond,

Chief Engineer Grand Trunk Railway Company of Canada.

The Champlain and St. Lawrence Railroad Company Director.
 International Bridge Company do. Owns 1 share of stock.
 St. Clair Tunnel Company do.

F. J. Watson,

General Freight Agent Grand Trunk Railway Company of Canada.

The Champlain and St. Lawrence Railroad Company..... Director.
The United States and Canada Railroad Company..... do.

L. R. Skinner.

Detroit, Grand Haven and Milwaukee Railway Company..... Director.
Toledo, Saginaw and Muskegon Railway Company..... do.

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J. A. Yates,

Assistant Treasurer Grand Trunk Railway Company of Canada.

Portland Elevator Company..... Director.
New England Elevator Company..... do.
The Champlain and St. Lawrence Railroad Company..... do.
The United States and Canada Railroad Company..... do.

John R. Myers.

The Champlain and St. Lawrence R. R. Co..... Director.
The United States and Canada Railroad Company..... do.

H. P. Sweetser,

Solicitor Grand Trunk Railway Company of Canada.

Atlantic and St. Lawrence Railroad Company..... Director.
Portland Elevator Company..... Director and Clerk.
New England Elevator Company..... do.

Mr. Sweetser will be elected Clerk at next meeting to elect Officers Vice Isaac W. Dyer.

A. A. Montgomery.

Portland Elevator Company..... Director.
New England Elevator Company..... do.

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E. F. Smith.

Vermont and Province Line Railroad Company..... Director.
Chicago, New York and Boston Refrigerator Company..... do.

E. J. Chamberlain.

International Bridge Company..... Director. Owns 1 share of stock.
Detroit, Grand Haven and Milwaukee Railway Company..... do.
Central Vermont Railway Company..... do.

M. H. Lane.

Grand Trunk Western Railway Company..... Director.
The Chicago and Kalamazoo Terminal Railroad Company..... do.
Bay City Terminal Railway Company..... do.

L. C. Stanley.

The Chicago and Kalamazoo Terminal Railroad Company..... Director.
The Detroit & Huron Railway Company..... do.
Detroit, Grand Haven and Milwaukee Railway Company..... do.

247 (37) That neither public nor private interest will be adversely affected by permitting the persons named in paragraph 36, their successors in office, or other persons to continue to hold or to hold the position of officer (including director) in two or more of the Grand Trunk Railway System or affiliated companies.

The Commission is respectfully requested to authorize pursuant to paragraph (12) of Section 20a of the Interstate Commerce Act all the persons named in paragraph 36 and their successors in office to continue to hold or to hold such offices after December 31, 1921, and further to authorize by an order general in its form and application the holding by the same person of the position of officer or/and director in two or more of the Grand Trunk Railway System or affiliated companies.

(38) In compliance with the requirements of paragraphs 5 and 6 of the Commission's regulations, the applicant company states that its relations to all of its affiliated and subsidiary companies, and the facts called for by said regulations in respect to such companies have been fully set forth in paragraph 2 of this application.

(39) That no one of the persons on whose behalf this application is made, has, to the knowledge of the applicant, made application to the Commission on his own behalf, nor has applicant any knowledge of such an application having been made by any other carrier company, except as follows:

248 Applications have been made by the following Companies on behalf of the following persons mentioned in this application.

Application made by—	On behalf of—	Date of application.
Chicago & Western Indiana Railroad Company.	Howard G. Kelley.	20th October, 1921
The Belt Railway Company of Chicago.	“	..20th October, 1921

(40) The Grand Trunk Railway Company respectfully shows that this application is made on behalf of the persons mentioned or referred to by description, because it is believed that the presenting of the application by it in this form gives the Commission a more complete understanding of the relations of the companies one to another, and the relations of the several persons named or described by designation of the several system companies.

That the great number of persons holding the office of director or other official position in the Grand Trunk Railway Company and its System companies and the continuing change in personnel considering the large number of persons affected, make it necessary that such order as may be entered by the Commission be not limited to the persons now holding the several positions, but be sufficient to authorize the holding of such offices and positions by such persons as may from time to time in the future be selected to hold

249 the same. If the order is not so made, embarrassing delays in change of personnel cannot be avoided and the time required to consider each individual application as changes become

necessary in the ordinary conduct of business will result in embarrassing delays.

The applicant, therefore, respectfully prays that the persons mentioned in this application and all other persons holding official position or positions, including that of director, in the Grand Trunk Railway Company of Canada and its affiliated or subsidiary carrier companies, and their successors in office, be authorized to continue to hold, or to hold, after December 31, 1921, such official position or positions, or other official positions in the Grand Trunk Railway Company, and in one or more of its affiliated or subsidiary carrier companies, and at the same time to hold official position or positions, including that of director, in other carrier companies, and that persons holding official positions in two or more carrier companies, where the holding of any such position is for the purpose of representing the interests of the Grand Trunk Railway Company of Canada, or of any of its affiliated or subsidiary companies, be authorized to continue to do so after December 31, 1921, and that the persons hereinbefore referred to be permitted to hold after December 31, 1921, the official position or positions indicated in the several companies stated, and that the order of the Commission be given such

250 scope as will relieve the applicant company from the necessity in the future of applying to the Commission for permission for the same person to hold more than one official position in some one or more of the several System Companies, and that the applicant company be granted such other further general relief and authority as may not be inconsistent with said paragraph (12) of Section 20a of the Interstate Commerce Act.

THE GRAND TRUNK RAILWAY
COMPANY OF CANADA,
By HOWARD G. KELLEY,
President.

251 DOMINION OF CANADA,
Province of Quebec,
City & District of Montreal, To wit:

Howard G. Kelley makes oath and says that he is the President of the Grand Trunk Railway Company of Canada, that he has carefully examined all of the statements contained in the foregoing application; that they are true and correct to the best of his knowledge and belief; and that the said application is made with the approval and at the direction of the Board of Directors of said applicant, as appears by the minutes of a meeting of said Board, held at Montreal, on the 12th day of December, 1921, and that he has been authorized by said Board to sign said application.

HOWARD G. KELLEY.

Subscribed and sworn to before me, a Notary in and for the Province of Quebec, this nineteenth day of December, A. D. 1921.

[SEAL.]

R. W. GIBB,

A Notary Public in & for the Province of Quebec.

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Interstate Commerce Commission,
Washington, D. C.

Order.

At a Session of the Interstate Commerce Commission, Division 4,
Held at Its Office, in Washington, D. C., on the 20th Day of February, A. D. 1922.

Finance Docket No. 2082.*

In the Matter of Authorization, under Paragraph (12) of Section 20a of the Interstate Commerce Act, to Hold the Positions of Officer or Director of More Than One Carrier.

Applications by the Grand Trunk Railway Company and the Central Vermont Railway Company and Its Subsidiaries in Behalf of Sundry Persons.

The applications, under said paragraph, in behalf of the persons hereinafter named being under consideration, and it appearing, upon due showing in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby,

1. *It is ordered*, That the applicants be, and they are hereby, authorized to hold, until further order of this Commission, positions with carriers as follows, respectively:

Applicants and positions.

Carriers.

Sir Joseph W. Flavelle, Bart.:

Director	Atlantic and St. Lawrence Railroad Company.
	The Champlain and St. Lawrence Railroad Company.

J. N. Dupuis:

Director	Atlantic and St. Lawrence Railroad Company.
	The Champlain and St. Lawrence Railroad Company.

Frank Scott:

Director and Treasurer	Atlantic and St. Lawrence Railroad Company.
	International Bridge Company.
	St. Clair Tunnel Company.
	The Grand Trunk Junction Railway Company.

*This order also embraces Finance Docket No. 1941.

Applicants and positions.

Carriers.

	The Chicago and Kalamazoo Terminal Railroad Company.
	The Pontiac, Oxford and Northern Railroad Company.
Director and Treasurer	Grand Rapids Terminal Railroad Company.
	Toledo, Saginaw and Muskegon Railway Company.
	Chicago, Detroit and Canada Grand Trunk Junction Railroad Company.
	Michigan Air Line Railway.
	Bay City Terminal Railway Company.
Secretary and Treasurer	The Champlain and St. Lawrence Railroad Company.
Director, Vice-President and Treasurer	Grand Trunk Western Railway Company.
	Detroit, Grand Haven and Milwaukee Railway Company.
Director, Secretary and Treasurer	The United States and Canada Railroad Company.
Director, Assistant Clerk & Treasurer	Vermont and Province Line Railroad Company.
Treasurer	The Detroit & Huron Railway Company.
Director	Detroit Terminal Railroad Company.
	Southern New England Railway Company.
	Southern New England Railroad Corporation.
	Southern Vermont Railway Company.
Director and Vice-President.	Central Vermont Railway Company.
	Bethel Granite Railway Company.
Director, Vice-President and Member of Executive Committee	Central Vermont Transportation Company.
J. E. Dalrymple:	
Director	The United States and Canada Railroad Company.

Applicants and positions.	Carriers.
Director and Vice-President.	Chicago, New York and Boston Refrigerator Co.
Vice-President	Central Vermont Railway Company.
W. D. Robb:	
Vice-President	The Champlain and St. Lawrence Railroad Company. The Detroit and Huron Railway Company.
Director and Vice-President.	The United States and Canada Railroad Company. International Bridge Company. St. Clair Tunnel Company. Grand Trunk Western Railway Company.
254	The Grand Trunk Junction Railway Company.
Director and Vice-President.	The Chicago and Kalamazoo Terminal Railroad Company. The Pontiac, Oxford and Northern Railroad Company. Detroit, Grand Haven and Milwaukee Railway Company Company. Grand Rapids Terminal Railroad Company. Toledo, Saginaw and Muskegon Railway Company. Chicago, Detroit and Canada Grand Trunk Junction Railroad Company. Michigan Air Line Railway. Bay City Terminal Railway Company.
Director	The Detroit and Toledo Shore Line Railroad Company.
J. M. Rosevear:	
General Auditor	Atlantic and St. Lawrence Railroad Company.
Special Auditor	The Detroit and Toledo Shore Line Railroad Company.
Auditor	Grand Trunk Western Railway Company. The Grand Trunk Junction Railway Company. The Chicago and Kalamazoo Terminal Railroad Company. The Pontiac, Oxford and Northern Railroad Company.

Applicants and positions.

Carriers.

The Detroit & Huron Railway Company.
 Detroit, Grand Haven and Milwaukee Railway Company.
 Grand Rapids Terminal Railroad Company.
 Toledo, Saginaw and Muskegon Railway Company.
 Chicago, Detroit and Canada Grand Trunk Junction Railroad Company.
 Michigan Air Line Railway.
 Bay City Terminal Railway Company.
 Chicago, New York and Boston Refrigerator Company.

A. B. Atwater:

Director St. Clair Tunnel Company.
 Grand Trunk Western Railway Company.
 The Grand Trunk Junction Railway Company.
 The Chicago and Kalamazoo Terminal Railroad Company.
 The Pontiac, Oxford and Northern Railroad Company.
 The Detroit & Huron Railway Company.
 Detroit, Grand Haven and Milwaukee Railway Company.
 Grand Rapids Terminal Railroad Company.
 Toledo, Saginaw and Muskegon Railway Company.
 Chicago, Detroit and Canada Grand Trunk Junction.
 Michigan Air Line Railway.
 Bay City Terminal Railway Company.
 The Detroit and Toledo Shore Railroad Company.
 Toledo Terminal Railroad Company.
 Director and Vice-President. Detroit Terminal Railroad Company.

H. E. Whittenberger:

Director St. Clair Tunnel Company.
 Grand Trunk Western Railway Company.

Applicants and positions.

Carriers.

The Chicago and Kalamazoo
Terminal Railroad Company.
The Pontiac, Oxford and North-
ern Railroad Company.
Detroit, Grand Haven and Mil-
waukee Railway Company.
Chicago, Detroit and Canada
Grand Trunk Junction Rail-
road Company.
Michigan Air Line Railway.
Bay City Terminal Railway Com-
pany.

W. C. Tomkins:

Secretary	International Bridge Company. St. Clair Tunnel Company.
Secretary and Assistant Treas- urer	Grand Trunk Western Railway Company. Toledo, Saginaw and Muskegon Railway Company. Chicago, Detroit and Canada Grand Trunk Junction Rail- road Company. Michigan Air Line Railway.
Director, Secretary and Asst. Treasurer	The Grand Trunk Junction Rail- way Company. The Chicago and Kalamazoo Terminal Railroad Company. The Pontiac, Oxford and North- ern Railroad Company. The Detroit & Huron Railway Company. Detroit, Grand Haven and Mil- waukee Railway Company. Grand Rapids Terminal Railroad Company. Bay City Terminal Railway Com- pany.
Secretary and Treasurer	The Detroit and Toledo Shore Line Railroad Company.
Director and Treasurer	Detroit Terminal Railroad Com- pany.

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F. L. C. Bond:

Director	The Champlain and St. Law- rence Railroad Company. International Bridge Company, St. Clair Tunnel Company.
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Applicants and positions.

Carriers.

F. J. Watson:

Director The Champlain and St. Lawrence Railroad Company.
The United States and Canada Railroad Company.

L. R. Skinner:

Director Detroit, Grand Haven and Milwaukee Railway Company.
Toledo, Saginaw and Muskegon Railway Company.

J. A. Yates:

Director The Champlain and St. Lawrence Railroad Company.
The United States and Canada Railroad Company.

John R. Myers:

Director The Champlain and St. Lawrence Railroad Company.
The United States and Canada Railroad Company.

E. F. Smith:

Director Vermont and Province Line Railroad Company.
Chicago, New York and Boston Refrigerator Company

E. J. Chamberlain:

Director International Bridge Company.
Detroit, Grand Haven and Milwaukee Railway Company.
Central Vermont Railway Company.

M. H. Lane:

Director Grand Trunk Western Railway Company.
The Chicago and Kalamazoo Terminal Railroad Company.
Bay City Terminal Railway Company.

L. C. Stanley:

Director The Chicago and Kalamazoo Terminal Railroad Company.
The Detroit & Huron Railway Company.
Detroit, Grand Haven and Milwaukee Railway Company.

Applicants and positions.

Carriers.

E. C. Smith:

President, Director and Member of Executive Committee

Central Vermont Railway Company.

Central Vermont Transportation Company.

Bethel Granite Railway Company.

Southern New England Railway Company.

Southern New England Railway Corporation.

President and Director

Southern Vermont Railway Company.

Director

New London Northern Railroad Company.

Mississippi River & Bonne Terre. West River Railroad Company.

Vice-President and Director.

J. Gregory Smith:

Director

Central Vermont Railway Company.

Central Vermont Transportation Company.

Bethel Granite Railway Company.

Southern New England Railway Company.

Southern New England Railway Corporation.

Southern Vermont Railway Company.

West River Railroad Company.

E. Deschenes:

Comptroller

Central Vermont Railway Company.

Auditor

Central Vermont Transportation Company.

Director & Auditor

Bethel Granite Railway Company.

Southern New England Railway Company.

Southern New England Railway Corporation.

Director & Vice-President ..

Southern Vermont Railway Company.

Applicants and positions.

Carriers.

J. B. Wood:

Treasurer and Asst. Clerk . . .	Central Vermont Railway Company. Central Vermont Transportation Company.
Treasurer and Clerk	Bethel Granite Railway Company. Southern New England Railway Company. Southern New England Railway Corporation.
Treasurer, Asst. Clerk & Director	Southern Vermont Railway Company. West River Railroad Company.

J. R. Southard:

Treasurer and Director . . .	New London Northern Railroad Company.
Director	West River Railroad Company.

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J. W. Redmond:

General Counsel	Central Vermont Railway Company.
Director and Member of Executive Committee	Southern New England Railway Company. Southern New England Railway Corporation.

2. *It is further ordered*, That Howard H. Kelley be, and he is hereby, authorized to hold, until further order of this Commission, in addition to the positions which he was authorized to hold by the Commission's order, entered November 9, 1921, in Finance Docket No. 1626, positions with carriers as follows, respectively:

Positions.

Carriers.

Director and President	Atlantic and St. Lawrence Railroad Company. The Champlain and St. Lawrence Railroad Company. The United States and Canada Railroad Company. Vermont and Province Line Railroad Company. International Bridge Company. St. Clair Tunnel Company. Grand Trunk Western Railway Company.
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Positions.	Carriers.
	The Grand Trunk Junction Railway Company.
	The Chicago and Kalamazoo Terminal Railroad Company.
	The Pontiac, Oxford and Northern Railroad Company.
	The Detroit & Huron Railway Company.
	Detroit, Grand Haven and Milwaukee Railway Company.
	Grand Rapids Terminal Railroad Company.
	Toledo, Saginaw and Muskegon Railway Company.
	Chicago, Detroit and Canada Grand Trunk Junction Railroad Company.
	Michigan Air Line Railway.
	Bay City Terminal Railway Company.
Director and Vice-President	The Detroit and Toledo Short Line Railroad Company.
Director	Detroit Terminal Railroad Company.
Director and Chairman of Board.	Central Vermont Railway Company.
	Southern New England Railroad Corporation.
	Southern New England Railway Company.
	Bethel Granite Railway Company.
	Southern Vermont Railway Company.

It further appearing, upon due investigation, that neither the Grand Trunk Railway Company nor the Portland Elevator Company nor the New England Elevator Company is a common carrier by railroad or a corporation organized for the purpose of engaging in transportation by railroad within the meaning of said paragraph

(12) of section 20a of the interstate commerce act.
 259 3. *It is further ordered*, That so much of said applications as relates to requests for authority for persons therein named to hold positions with The Grand Trunk Railway Company, Portland Elevator Company and New England Elevator Company, be and it is hereby, dismissed.

4. *And it is further ordered*, That a copy of this order be served upon The Grand Trunk Railway Company, Central Vermont Railway Company, Central Vermont Transportation Company, Bethel

Granite Railway Company, Southern New England Railway Company, Southern New England Railroad Corporation, Southern Vermont Railway Company and West River Railroad Company, and that notice of this order be given to the general public by depositing a copy thereof in the office of the Commission's Secretary at Washington, D. C.

By the Commission, Division 4:

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

260 Thereupon the defendant produced as a witness V. L. ALMOND who testified as follows: I am employed by the Interstate Commerce Commission as Assistant Chief of the Accounting Section Bureau of Finance. Acceptances of the guaranty under section 209 of the Transportation Act 1920 pass through my hands. I am familiar with those that have been made. The Grand Trunk Railway Company of Canada has not accepted the provisions of this section in regard to the operation of its Canadian lines. By Canadian lines I mean its lines operating within the Dominion of Canada.

The foregoing is the substance of all the testimony given on the trial.

Thereupon the issue joined herein having been argued by counsel, was submitted to the Court, and the Court having considered the same, found the said issue in favor of the defendant, the Interstate Commerce Commission, and thereupon it was determined by the Court that the petition herein be dismissed and that the defendant have judgment to that effect, and for its legal costs in its behalf expended.

And thereupon after the foregoing proceedings which are hereby made a part of the record, the petitioner, by its counsel, tendered this bill of exceptions, and prayed the Court to sign and seal the same according to the form of the statute in such case made and provided, which is accordingly done, and said bill of exceptions is hereby made a part of the record in said cause this 13th day of September 1922 now for then.

A. A. HOEHLING,
Justice.

Agreed to.

J. CARTER FORT,
Attorney for Interstate Commerce Commission.
WILLIAM G. WHEELER,
Attorney for Petitioner.

261 [Endorsed:] At Law. No. 66405. Supreme Court Dist. Col. United States ex Rel. Chicago, New York & Boston Refrigerator Company, Petitioner, vs. Interstate Commerce Commission, Defendant. Bill of Exceptions. Original.

Endorsed on cover: District of Columbia Supreme Court. No. 3882. United States ex relatione Chicago, New York & Boston Refrigerator Company, a corporation, appellant, vs. Interstate Commerce Commission. Court of Appeals, District of Columbia. Filed Sep. 18, 1922. Henry W. Hodges, clerk.

(7311)

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

Tuesday, January 2nd, A. D. 1923.

* * * * *

[Title omitted]

ARGUMENT

The argument in the above entitled cause was commenced by Mr. W. G. Wheeler, attorney for the appellant.

Wednesday, January 3rd, A. D. 1923.

* * * * *

[Title omitted]

The argument in the above entitled cause was continued by Mr. W. G. Wheeler, attorney for the appellant and was concluded by Mr. J. Carter Fort, attorney for the appellee.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

OPINION

Before Smyth, Chief Justice, Robb, Justice, and Smith, Judge of the United States Court of Customs Appeals

Mr. Chief Justice Smyth delivered the opinion of the Court:

SMYTH, *Chief Justice*:

Chicago, New York & Boston Refrigerator Company, for convenience designated herein as the Refrigerator Company, filed its petition in the Supreme Court of the District of Columbia for a mandamus directing the Interstate Commerce Commission to ascertain and certify to the Secretary of the Treasury of the United States the amounts necessary to make good to it the guaranty provided for a carrier in section 209 of the Transportation Act of 1920 (41 Stat. 456). The petition alleged that the plaintiff had made application to the Commission for the certificate mentioned but that it declined to issue it, on the ground that the Refrigerator Company was not a carrier within the meaning of the section. A rule to show cause was issued, to which the Commission responded by filing an answer. The Refrigerator Company traversed the answer and joined issue thereon. Much testimony was taken, but the facts are not in dispute. The court, approving the views of the Commission, discharged the

rule and dismissed the petition. From this action the Refrigerator Company appeals.

The following are the pertinent provisions of section 209:

(a) When used in this section—

The term "carrier" means (1) a carrier by railroad or partly by railroad and partly by water, whose railroad or system of transportation is under Federal control at the time Federal control terminates, or which has heretofore engaged as a common carrier in general transportation and competed for traffic, or connected, with a railroad at any time under Federal control; and (2) a sleeping car company whose system of transportation is under Federal control at the time Federal control terminates; but does not include a street or interurban electric railway not under Federal control at the time Federal control terminates, which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic or sale of power, heat, and light, or both;

The term "guaranty period" means the six months beginning March 1, 1920.

The term "test period" means the three years ending June 30, 1917; and

The term "railway operating income" and other references to accounts of carriers by railroad shall, in the case of a sleeping car company, be construed as indicating the appropriate corresponding accounts in the accounting system prescribed by the commission.

(b) This section shall not be applicable to any carrier which does not on or before March 15, 1920, file with the commission a written statement that it accepts all the provisions of this section.

(c) The United States hereby guarantees—

(1) With respect to any carrier with which a contract (exclusive of so-called cooperative contracts or waivers) has been made fixing the amount of just compensation under the Federal control act, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than one-half the amount named in such contract as annual compensation.

* * * * *

(g) The commission shall, as soon as practicable after the expiration of the guaranty period, ascertain and certify to the Secretary of the Treasury the several amounts necessary to make good the foregoing guaranty to each carrier. The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of each such carrier upon the Treasury of the United States, for the amount shown in such certificate as necessary to make good such guaranty. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated.

It is conceded that the Refrigerator Company is not a carrier partly by railroad and partly by water. The only question for decision is as to whether it is a "carrier by railroad."

It appears that the Refrigerator Company was incorporated to manufacture, sell, or rent freight cars, engines, and other rolling stock used in the operation of railroads; to manufacture and deal in any articles fabricated of wood, iron or other metals; to deal in patents; to purchase and lease real and personal estate, and to do any and all acts incidental to or connected with the business just described. The articles of incorporation do not say it was to become a carrier by railroad or otherwise. It owns 1,300 refrigerator cars, but does not own or control any motive power, road bed tracks or other railroad property or facilities besides the cars. These cars are rented to certain railroad companies and are used in the transportation of dairy products by the lessees from the west to the east. In addition to the rental which it receives from the railroad companies for its cars, certain railroad companies, pursuant to a contract between them and the Refrigerator Company, pay to the latter commissions for soliciting shipments which move over their lines in its cars. Shipments thus obtained move east of Chicago over the rails of the contracting railroad companies. No employees of the Refrigerator Company travel with its cars.

By contract between the Refrigerator Company and the railroads it is provided, *inter alia*, that the cars in the west are not to be loaded eastbound with local traffic "of the railways," nor in any way diverted from the established through routes without the consent of the Refrigerator Company, nor are they to be loaded with any freight that would render them unfit for the carriage of refrigerator traffic; and it is further provided that the cars shall be under the control of the railroads while on their respective lines, but that the directions of the Refrigerator Company as to the distribution at or west of Chicago shall be promptly observed.

The railroad companies make out in their own names bills of lading covering the shipments moving in the Refrigerator Company's cars, except that as to some shipments originating in the west and reconsigned at Chicago, which constitute about ten per cent. of all shipments in its cars, the Refrigerator Company issues bills of lading on its own forms at Chicago covering the movement east of that city. These bills of lading have printed on their faces the following language: "Received subject to the classifications and tariffs in effect on the date of the issue of this original bill of lading." This refers to the tariffs of the railroad companies. At times the Refrigerator Company collects prepaid freight charges on shipments moving from Chicago in its cars, but turns over the entire amount collected to the railroad companies. The Refrigerator Company also investigates and settles loss and damage claims in connection with shipments moving in its cars, but is reimbursed by the railroad companies for the entire amount paid in such settlements. Upon shipments moving in the cars of the Refrigerator Company shippers pay freight charges to the railroad companies at the rates published and filed with the Commission by the railroad companies which transport such shipments. The Refrigerator Company receives no payment or compensation of any kind from the shippers for transportation service.

During the period of Federal control, which lasted until March, 1920, the cars of the Refrigerator Company were used by the Director General of Railroads, and the Refrigerator Company was compensated by the United States for their use. At the expiration of Federal control the cars were returned to the Refrigerator Company and it again let them to the railroad companies to be used as before. For their use it was paid by the companies the usual car rental. During the guaranty period, that is, the six months following Federal control, its cars moved over the same routes as prior to Federal control, but it received no commissions from the railroad companies for soliciting business and did very little, if any, soliciting. An attempt was made by it to renew its commission arrangements, but the railroad companies would not consent. However, after the expiration of the guaranty period the commission arrangements were resumed.

The Refrigerator Company files no tariff with the Commission, which common carriers by railroad engaged in interstate commerce are required to do by section 6 of the Interstate Commerce Act, and it does not comply with the rules of the Commission with respect to the manner in which railroad companies shall keep their accounts. Many other things are mentioned in the testimony, but we think we have set forth all that has any bearing upon the question we are to decide.

Summarized, the testimony shows that the Refrigerator Company is not incorporated as a carrier, does not control or use the necessary facilities for performing carriage, does not hold itself out to perform carriage by publishing rates applicable thereto, and does not in fact perform carriage or receive any compensation from shippers whose shipments move in its cars. The cars are rented to railroad companies. They are subject to the control of the latter and are to all intents and purposes their property during the period of the lease. In a word, the Refrigerator Company carries nothing. Tacitly it admits this, but says that it causes freight to be carried. So do all shippers, but that does not make them carriers.

The phrase "carrier by railroad" as it appears in the Employers' Liability Act (36 Stat. 291) was interpreted by the Supreme Court of the United States in *Wells Fargo & Co. vs. Taylor*, 254 U. S. 175. Taylor contended that the express company was a carrier by railroad. The record disclosed that it conducted its business on and over a railroad; that the railroad company was to refrain from conducting any express business; and that the express company was supplied with portions of station houses to be used by it for the reception, safe-keeping and delivery of express matter carried in cars supplied by the railroad company. It fixed its own rates, received the goods to be transported by it, cared for them in transit, delivered them to the consignees, and collected for the service rendered. The railroad company had nothing to do with these things, yet the court held that the express company, while a common carrier, was not a common carrier by railroad. It said that a carrier by railroad is one "who operates a railroad as a means of carrying for the public,—that is to say, a railroad company acting as a common carrier;" and added

that this view was not only "in accord with the ordinary acceptance of the words, but is enforced by the mention of cars, engines, track, roadbed and other property pertaining to a going railroad * * * by the use of similar words in closely related acts which apply only to carriers operating railroads, * * * and by the fact that similar words in the original Interstate Commerce Act had been construed as including carriers operating railroads but not express companies doing business as here shown." Decisions are cited in support of the ruling. Pages 187, 188. Following the reasoning of that case we may say that the use of the term "railway operating income of such carrier," occurring in subdivision (1) of (c) of the section enforces the contention that the Refrigerator Company is not a carrier by railroad. Its income cannot be spoken of correctly as a railway operating income. Congress, as the section shows, found it necessary to give the term a special construction for the purpose of applying it to sleeping car companies. It would need a like construction by Congress before it could be applied to the Refrigerator Company. The court has no power to supply what Congress omitted.

It is said that the definition of the term "common carrier by railroad" given in the Taylor case was limited to the act then being construed. This, of course, is true, but we think that if the express company under the circumstances disclosed was not a carrier by railroad, neither is the Refrigerator Company. The reasoning of the opinion compels this result.

Another case which we think is quite in point is that of *Ellis vs. Interstate Commerce Commission*, 237 U. S. 434. We learn from the opinion that the Armour Car Lines, a New Jersey corporation, owned, manufactured, and maintained refrigerator, tank, and box cars, and let the cars to the railroads or to shippers. It owned and operated icing stations on various lines of railroad, and from these it iced and re-iced the cars when set by the railroad companies at the icing plant. The railroads paid a certain rate per ton and charged the shippers according to tariffs on file with the Commission. The corporation had no control over motive power or over the movements of the cars that it furnished. The court held it was not a common carrier subject to the Act to Regulate Commerce. We are unable to see why the ruling in that case should not be applied to the one before us.

The Refrigerator Company calls attention to the fact that it solicited business to be transported by rail, that it had a trained organization by which the shippers were kept in direct personal contact with it, that they were advised by this special organization as to the best manner and method of preparing, packing, and handling this class of traffic, and that the shippers who dealt with it knew no other carrier and had no other in mind. But all these things can be said with equal force of an express company, and yet, as we have seen, it is not a common carrier by rail. Not only may these things be said of an express company, but also of sleeping car companies, but Congress did not think the latter were carriers by rail, for it provided specifically for them in section 209, and this it would not have done if it believed they were included in the phrase "carrier

by railroad." The Refrigerator Company seeks to escape the force of this fact by saying that sleeping car companies have never been considered as common carriers by railroad; but that is not the question. If the facts upon which it relies establish that it is a common carrier by railroad, then they should, by a parity of reasoning, establish that the sleeping car companies are also carriers by railroad. Perhaps Congress should have included the Refrigerator Company and like companies, but we are not concerned about what it should have done but about what it did do.

With respect to the claim that the Refrigerator Company did not file tariffs with the Interstate Commerce Commission, counsel say that this is not proof that it was not a common carrier. No, but it tends to show that the Refrigerator Company did not regard itself as such. Emphasis is laid by the Refrigerator Company upon the phrase "whose railroad or system of transportation is under Federal control at the time Federal control terminates," which occurs in subdivision (a) of section 209. They argue that it owned a system of transportation at the time mentioned. We do not think so. But however that may be, this phrase cannot be considered apart from the words which precede it in the same sentence. The organization entitled to the guaranty must be a carrier by railroad or partly by railroad and partly by water. If it is not, the fact that it may be a system of transportation would not bring it within the purview of the guaranty.

For the reasons given the judgment of the lower court is affirmed with costs.

Affirmed.

COURT OF APPEALS, DISTRICT OF COLUMBIA

Tuesday, April 3rd, A. D. 1923.

* * * * *

[Title omitted]

JUDGMENT

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per Mr. Chief Justice Smyth, April 3, 1923.

Judge James F. Smith of the United States Court of Customs Appeals sat in this case in the place of Justice Van Orsdel.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, APRIL TERM,
1923

No. 3882

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed Apr. 6, 1923

Now comes the appellant in the above entitled cause by its attorney and prays the Court for the allowance of a writ of error to remove this cause to the Supreme Court of the United States and to fix bond to operate as a supersedeas in the sum of Three Hundred Dollars.

This is a case arising under Section No. 209 of the Transportation Act of 1920 and the decision of the case necessarily involves a consideration of that statute.

William G. Wheeler, Attorney for Appellant.

[File endorsement omitted.]

IN COURT OF APPEALS, DISTRICT OF COLUMBIA

Saturday, April 7th, A. D. 1923.

* * * * *

[Title omitted]

ORDER ALLOWING WRIT OF ERROR

On consideration of the motion for the allowance of a writ of error to remove the above entitled cause to the Supreme Court of the United States, It is ordered that the writ issue as prayed, and the bond to act as supersedeas is fixed at the sum of three hundred dollars.

WRIT OF ERROR

UNITED STATES OF AMERICA, *vs.*:

The President of the United States to the Honorable the Justices of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between United States Ex relatione Chicago, New York & Boston Refrigerator Company, a Corporation, Appellant, and Interstate Commerce Commission, Appellee, a manifest error hath happened, to the great damage of the said appellant, as by its complaint appear. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be

therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 11th day of April, in the year of our Lord one thousand nine hundred and twenty-three.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. [Seal of the Court of Appeals, District of Columbia.]

BOND ON WRIT OF ERROR, FOR \$300.00; APPROVED BY SMYTH, C. J.—
[Omitted in Printing; Filed Apr. 11, 1923]

[File endorsement omitted.]

CITATION AND SERVICE—Filed Apr. 12, 1923

UNITED STATES OF AMERICA, *vs.*

To Interstate Commerce Commission, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein United States ex relatione Chicago, New York & Boston Refrigerator Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Constantine J. Smyth, Chief Justice of the Court of Appeals of the District of Columbia, this 11th day of April, in the year of our Lord one thousand nine hundred and twenty-three.

Constantine J. Smyth, Chief Justice of the Court of Appeals
of the District of Columbia.

Service acknowledged.

J. Carter Fort, Counsel for Appellee.

[File endorsement omitted.]

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Apr. 11, 1923

Comes now the petitioner and relator, Chicago, New York & Boston Refrigerator Company, and says that the Court of Appeals of the District of Columbia erred in the following particulars, which upon writ of error to the Supreme Court of the United States, said petitioner and relator assigns as error:

1. The court erred in holding that petitioner and relator is not a carrier by railroad within the meaning of section 209 of the Transportation Act 1920.

2. The court erred in holding that petitioner and relator is not subject or entitled to the guaranty provisions of section 209 of the Transportation Act 1920.

3. The court erred in denying the relief prayed for in the petition herein.

4. The court erred in affirming the judgment of the lower court, the Supreme Court of the District of Columbia.

William G. Wheeler, Attorney for Petitioner and Relator.
Edward M. Hyzer, Of Counsel.

[File endorsement omitted.]

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed Apr. 11, 1923

In preparing the transcript of record on writ of error in the above entitled cause the clerk will include the following:

1. Printed Record.
2. Note of the Argument.
3. Opinion.
4. Judgment.
5. Motion for Writ of Error and to Fix Supersedeas Bond.
6. Order allowing Writ and Fixing Bond.
7. Writ of Error.
8. Supersedeas Bond.
9. Citation.
10. Assignment of Errors.
11. This Designation.

William G. Wheeler, Attorney for Appellant.

[File endorsement omitted.]

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and type-written pages numbered from 1 to 145, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of United States Ex relatione Chicago, New York & Boston Refrigerator Company, a Corporation, Appellant, vs. Interstate Commerce Commission, No. 3882, April Term, 1923, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 12th day of April, A. D. 1923.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. [Seal of the Court of Appeals, District of Columbia.]

Endorsed on cover: File No. 29,542. District of Columbia Court of Appeals. Term No. 288. The United States ex rel. Chicago, New York & Boston Refrigerator Company, appellant, vs. Interstate Commerce Commission. Filed April 13th, 1923. File No. 29,542

APR 3 1924

WM. R. STANSBURY

CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1923.
NUMBER 288.

THE UNITED STATES *ex rel.* CHICAGO, NEW YORK & BOS-
TON REFRIGERATOR COMPANY, A CORPORATION,
Plaintiff in Error,

vs.

INTERSTATE COMMERCE COMMISSION,
Defendant in Error.

IN ERROR TO THE COURT OF APPEALS,
DISTRICT OF COLUMBIA.

BRIEF FOR PLAINTIFF IN ERROR.

WILLIAM G. WHEELER,
Attorney for Plaintiff in Error.

EDWARD M. HYZER,
Of Counsel.



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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

NUMBER 288.

THE UNITED STATES *ex rel.* CHICAGO, NEW YORK & BOS-
TON REFRIGERATOR COMPANY, A CORPORATION,
Plaintiff in Error,

vs.

INTERSTATE COMMERCE COMMISSION,
Defendant in Error.

IN ERROR TO THE COURT OF APPEALS,
DISTRICT OF COLUMBIA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF CASE.

The plaintiff in error here seeks to review by writ of error a judgment of the Court of Appeals of the District of Columbia, affirming a judgment of the Supreme Court of the District of Columbia, which latter

judgment discharged a rule to show cause why a writ of mandamus should not issue against the Interstate Commerce Commission, dismissed the petition herein and awarded costs against the plaintiff in error.

In its petition plaintiff in error alleged that it was a carrier by railroad, within the meaning of section 209 of the Transportation Act of 1920; that it accepted the provisions of that section and filed such acceptance with the Commission as required by law; that its property was taken under Federal control and was under Federal control at the time Federal control terminated; that it operated its property during the guaranty period, that is, from March 1, to September 1, 1920, and that such operation resulted in a loss and asked the Commission to ascertain and certify to the Secretary of the Treasury the result of such operation in order that plaintiff in error could secure the benefit of the guaranty contained in said section 209; that the Commission refused to ascertain and certify to the Secretary of the Treasury the result of such operation, basing its refusal upon the contention that plaintiff in error is not a carrier by railroad, within the meaning of said section 209. The defendant in error made answer to the petition and the plaintiff in error traversed the allegations of the answer. Court entered judgment for defendant in error and dismissed the petition upon the sole ground that the plaintiff in error was not a carrier by railroad within the meaning of said section 209.

From this judgment an appeal was taken to the Court of Appeals of the District of Columbia where the judgment of the lower court was affirmed.

To review the judgment of the Court of Appeals a writ of error was prayed and allowed.

The facts are not in dispute and there is but one question here for consideration and decision: Is the plaintiff in error a carrier by railroad within the meaning of section 209 of the Transportation Act 1920?

THE FACTS.

The plaintiff in error owns and operates a line of refrigerator cars of which there were in service immediately prior to Federal control 1340 cars (Rec., p. 58). It commenced business in 1893 and from that time to 1897 furnished cars for transporting dairy products. In 1897 it commenced to actively operate its line of refrigerator cars and formed and commenced to operate a fast freight refrigerator line for the transportation of dairy products under the contracts hereinafter mentioned. Headquarters were established in Chicago and agencies in St. Paul, Kansas City, Omaha, Sioux City, Mason City, Cedar Rapids, Milwaukee and Detroit, and in the east in New York, Philadelphia and Boston. The agents in the west called upon shippers, looked after freight shipped, distributed cars and notified train despatchers where cars were needed (Rec., p. 34).

September 16, 1897, plaintiff in error entered into a written contract with Grand Trunk Railway Company and its subsidiaries for the operation over the lines of these companies of the plaintiff in error's line of refrigerator cars (Rec., pp. 34-39). This contract recites, among other things, the fact that the parties have heretofore had contracts with each other relating to the transportation of refrigerator business, which they desire to cancel, and, for the public and

their own convenience and advantage to establish under a new contract, a refrigerator line over the roads of the parties of the second part, the railroad companies, and their connections; that the refrigerator company owns a large number of refrigerator cars and controls a large amount of refrigerator traffic (Rec., p. 34). It provides, among other things, that the railroad companies shall give the *cars* and *business* of the refrigerator company as favorable through rates, time and working facilities of every kind, as are given to the cars and business of other refrigerator lines, and shall place the refrigerator company upon as favorable a footing in every respect, for all its traffic, as the most favored refrigerator line operating via other routes (Rec., pp. 34 and 35); that the cars of the refrigerator company are not to be loaded for local business or in any way diverted without the consent of the refrigerator company (Rec., p. 35); that the refrigerator company shall have the right to erect upon railroad companies' property ice houses or cold storage warehouses, and that the railroad companies shall lay and maintain side tracks thereto (Rec., p. 35); that the railroad companies shall transport for the refrigerator company such ice, salt and other materials as may be required in connection with the business at rates not exceeding one-half cent per ton mile (Rec., pp. 35 and 36); that the railroad companies shall pay the refrigerator company three-fourths cents per mile, for the mileage run by the cars, whether loaded or empty, and shall pay in addition for all traffic transported over the lines of the railroad companies, on the cars "owned or controlled" by the refrigerator company or consigned in its care, 12½ per cent. of the gross earnings on certain traffic and 10 per cent on

other traffic, after deducting bridge tolls, etc. (Rec., p. 36); that the cars shall be under the control of the railroad companies upon their several roads but the directions of the refrigerator company as to their distribution shall be strictly and promptly observed (Rec., p. 36); that free transportation shall be issued to the officers, agents and employees of the refrigerator company over the lines of the railroad companies and their connections, and telegraph messages are to be transmitted free (Rec., p. 36); that upon the termination of the agreement all cars of the refrigerator company shall be delivered at western terminus free of charge upon such road as may be designated by the refrigerator company (Rec., p. 37); that the rules of the Master Car Builders' Association shall govern all questions affecting condition, loss, damage and repairs to cars (Rec., p. 37); that no switching or terminal charges shall be made against the refrigerator company or its cars covered by the agreement, but such service shall be performed by the railroad companies "without compensation as long as said second party participates in its proportion of the freight revenue" (Rec., p. 37); that if the refrigerator company does not furnish sufficient refrigerator traffic westbound the railroad companies may load with any class of freight that will not damage cars for dairy products (Rec., p. 37); that all cars shall be promptly unloaded at destination, and returned to Chicago by the proper route, and that the cars shall not be used for local traffic without the consent of the refrigerator company, "nor shall they be used for any other service than the through refrigerator car traffic to be carried by this agreement, without the consent of the party of the first part" (Rec., p. 37); that the railroad companies each agree to be in-

dividually responsible as common carriers and to pay for all damage to or loss of property while on their roads, etc. (Rec., p. 37); that the compensation provided by the contract shall be payable monthly (Rec., pp. 37 and 38); that the agreement is in substitution and amendment of an agreement of January 26, 1895, and shall remain in force ten years and annually thereafter until cancelled (Rec., p. 38); that the name and trade-mark of the refrigerator company shall be shown on any printed matter in which is shown the name of any of the other fast freight lines "operating over their roads" and that the same effort shall be made "to extend and maintain through traffic arrangements with the western connections for the handling of through business in connection with the refrigerator line operated by the party of the first part as they do for any other fast freight line" (Rec., p. 38); that the business carried on under the agreement, shall be done under the name and trade-mark of the "National Despatch Refrigerator Line" and "New York Despatch Refrigerator Line," the traffic of the first-named line to be routed via main line Grand Trunk System and St. Johns, and traffic of the other line via western division of the Grand Trunk and Niagara frontier (Rec., p. 38); that any question as to interpretation or meaning of any of the clauses of the contract shall be submitted to an arbitration (Rec., p. 38).

On August 26, 1907, a new contract was made between the plaintiff in error and the railroads comprising the Grand Trunk Railway System (Rec., pp. 39-44). This contract was similar in its general effect to the one which it superseded, but there were changes as to the amount of compensation and in some minor respects.

On March 3, 1908, the Boston & Maine Railroad Company agreed to operate under the terms of this last-mentioned agreement (Rec., pp. 44 and 45).

On April 1, 1913, the compensation features of the contract with the Grand Trunk System were changed, by increasing the plaintiff in error's share of gross revenues and the contract continued in force (Rec., pp. 45 and 46).

There was, up to the year 1913 a contract with the New York Central Railroad, for operation of plaintiff in error's cars over its lines, but this was terminated July 12, 1913 (Rec., pp. 46 and 47).

In 1913 an agreement was made with the Delaware, Lackawanna and Western Railroad Company for the operation over its lines of plaintiff in error's system of transportation, under which, with some slight modifications, operations were continued to the beginning of Federal control (Rec., pp. 51-53).

On February 25, 1915, a similar contract was made with Lehigh Valley Railroad Company, and which also continued to the beginning of Federal control (Rec., p. 54).

On January 4, 1915, a like agreement was made with Delaware and Hudson Railroad Company which also continued to the beginning of Federal control (Rec., p. 54).

From 1897 down to the beginning of Federal control, operation of plaintiff in error's business under all of these contracts, was along essentially the same lines and it was conducted in substantially the same manner that it was at the time Federal control commenced. There was no change. A description of the manner in which the business was operated immediately prior to Federal control, is illustrative of its operation for

the entire period prior to such control. It solicited traffic in Michigan, Illinois, Iowa, Missouri, Kansas, Nebraska, Minnesota, Wisconsin, North and South Dakota, and a little in Texas, Arkansas, and Oklahoma. Its field men, called travelling agents, called upon shippers in their territory and also upon railroad officers and agents. They performed duties similar to those of traffic representatives of a railroad company. Its business was confined to the carrying of butter, eggs, cheese, dressed poultry and condensed milk, all of which moved in refrigerator cars, and in the handling of which traffic plaintiff in error has specialized since it commenced business. These commodities are highly perishable and have to have special care. Plaintiff in error not only solicited business from the shippers but looked after shipments from point of origin to destination, and traced the cars throughout the entire route east of Chicago, always advising the shipper or receiver where the cars are. Receivers always wish this information as a large quantity of dairy products are sold before they arrive at destination. Plaintiff in error gave instructions as to the icing of cars at all icing stations, and reports of the movements of all its cars were given to it at all junction points. It frequently diverted shipments in transit.

This is done upon the request of the shipper or receiver and because the shipper may think that by so doing he can get a better market. The refrigerator company receives carloads of eggs that are destined for cold storage, and which are started on the road consigned to the owner in New York. The owner may not have sold them and may not know where he is going to sell them, but while the shipment is en route he may sell the shipment to go into Boston, Philadelphia or

New Jersey cold storage. In such case he notified plaintiff in error and it changed the routing of the car accordingly. If a shipment originating west of Chicago was reconsigned at Chicago, plaintiff in error took up the original bill of lading, issued its own bill of lading to the shipper and billed the car out. This new bill of lading was signed by plaintiff in error in the name of its President and General Manager and was the usual contract of a common carrier for the carriage of goods. It used both the order bill of lading and the so-called straight bill of lading (Rec., pp. 55 and 56). For forms of the order bill of lading see Plaintiff's Exhibit 9 opposite Record, page 56. Plaintiff in error used these bills of lading when it reconsigned freight and also when it billed freight out of Chicago.

It was handling about 12,000 cars per year when Federal control commenced and had been for some time previously. When plaintiff in error issued its bill of lading the freight moved to destination on that bill and no railroad bill of lading issued unless the car was afterwards reconsigned. About ten per cent of plaintiff in error's traffic moved on bills of lading which it issued on its own forms and which are signed by its own officers or agents. About fifty per cent of its traffic moved without bill of lading but on a receipt issued at Chicago upon plaintiff in error's forms (Rec., p. 56).

When shipments are en route plaintiff in error receives reports from Port Huron, Buffalo and St. Albans. Buffalo means either Suspension Bridge, where freight is delivered to Lehigh Valley Railroad Company, or Black Rock where delivery is made to Delaware, Lackawanna and Western Railroad Company (Rec., p. 56).

If plaintiff in error receives instructions to divert a shipment it does so and the shipment moves according to its instructions. None of the railroads can exercise control over the movement without the sanction of plaintiff in error (Rec., p. 57).

Plaintiff in error's traffic moves to Port Huron, Michigan, over the line of the Grand Trunk Western Railroad Company; if the traffic is destined for Boston it goes from Port Huron to Coteau Junction on Grand Trunk main line, and the rest of the way on the Central Vermont and Boston and Maine. If freight is moving to New York it moves from Port Huron over the Grand Trunk to Buffalo and from thence to New York over the Lehigh Valley or Delaware, Lackawanna and Western. If freight is going to Philadelphia it moves from Buffalo over the Lehigh Valley (Rec., p. 57).

Plaintiff in error's traffic as a whole is between Chicago in the west and New York, Philadelphia and Boston in the east, and is over the lines with which it has contracts. When the cars are unloaded in the east, most of them are sent back empty, and when they arrive in Chicago are cleaned, repaired and inspected by plaintiff in error. The cars follow continually the routes above described. Plaintiff in error accepts shipments destined for points in the east on lines other than those with which it has contracts, but does not attempt to haul less than a carload shipment to any outlying point (Rec., p. 57).

Plaintiff in error has for twenty years issued circulars to its patrons in the west. One of these is a circular which contains a list of all cold storage houses in the east and which contains this significant language:

"To shippers: Following is a list of cold storage houses located at eastern points reached by these lines. Special New York or National Despatch Refrigerator cars will be furnished for carload shipments of eggs, dressed poultry and dairy products, consigned to or in care of these cold storage houses. Shippers are requested to route care New York Despatch Line specifying delivering R. R. named below" (Rec., p. 57 and plaintiff's Exhibit 410).

Another of these circulars, issued once and sometimes twice a year for twenty years is a notice of daily service which plaintiff in error undertakes to furnish out of Chicago for eastern points. This circular, among other things, states that plaintiff in error

"will receive at Grand Trunk Railway, Taylor Street and Plymouth Place, butter, eggs, cheese and dressed poultry, in any quantity and will forward in refrigerator cars, daily (except Sundays and legal holidays) from Chicago" to a list of destination points therein mentioned; and further states that "Carloads from connecting roads for any point reached via these lines will be forwarded daily including Sundays and holidays" (Rec., p. 57, and plaintiff's exhibit 11).

Plaintiff in error issues icing instructions to the foremen of all icing stations and a copy of these is in the record (Rec., p. 58, and plaintiff's exhibit 12).

Another circular, also issued yearly to the shippers of dressed poultry, states, among other things,

"We want to take this opportunity of thanking the trade for the confidence shown by them in consigning their shipments to our care. This confidence has enabled us to build up our service

to such an extent that we are in a position to carry your goods to the principal points in the East, insuring the most efficient handling to New York, Boston, Philadelphia, Buffalo, Providence and other Eastern and New England points" (Rec., p. 58, and plaintiff's exhibit 13).

Plaintiff in error periodically issued a rate sheet quoting rates on traffic carried in its cars (Rec., p. 89 and plaintiff's Exhibit 43).

Immediately prior to Federal control plaintiff in error had 1,340 cars in service. Moving to the east they carried no freight except that plaintiff in error secured in the conduct of its business, and they were and are always loaded with refrigerated dairy products, except as to a small amount of equipment used by packers. Shipments originating west of Chicago are routed care of New York Despatch, which is a trade name for plaintiff in error. When these shipments reach Chicago they are delivered to Grand Trunk Western Railway Company and are then subject to the direction of plaintiff in error. Shipments moving east of Chicago are handled on the lines with which plaintiff in error has contracts, because on these lines it has its organization, likewise icing arrangements and arrangements for supervision of shipments (Rec., p. 58).

Prior to Federal control, if a shipper elected to pay freight charges, plaintiff in error made the collection. It also, in certain cases, extended credit to shippers, and in such case, ordered the shipment billed prepaid. All freight charges collected were turned over to the railway company as plaintiff in error's share of this revenue was governed by its contracts with the several railroad companies (Rec., p. 58).

Prior to 1897 there was no segregation of the solicitation of dairy traffic. All such traffic was solicited by the railroad companies in connection with the solicitation of other traffic. In 1897 that practice ceased and plaintiff in error took on the solicitation of dairy products and organized for that purpose (Rec., p. 58).

It started out with a plan to specialize on dairy traffic. It sent its agents to the east to become familiar with the business of the receivers of freight, to ascertain just how such business was conducted at destination, so that when they came in contact with the country shipper they were well informed and had the required knowledge of the business in the east. These agents conferred with the shipper and advised him as to the best method and practice of packing, shipping and caring for the shipments. Plaintiff in error was in competition with other refrigerator lines and considered it a trade advantage to keep in close touch with shippers and did so. Since that practice was adopted in 1897 plaintiff in error's tonnage has more than doubled. Plaintiff in error operates under the trade names of "New York Despatch Refrigerator Line" and "National Despatch Refrigerator Line." The first of these names has great value because of the general relation between the shippers and the Company and because of the Company's method of doing business. Every shipper in the west and every receiver in the east knows this name (Rec., p. 82).

Plaintiff in error's practice is to accept everything in the line of dairy products that is tendered to it where it advertises that it will take care of such. As to butter, eggs, and other dairy products its service is open to the public generally, without limitation as between individuals or individual shippers. It owns

its own cars and at its different agencies owns its furniture and fixtures (Rec., p. 82).

Prior to Federal control plaintiff in error investigated, adjusted and paid all loss and damage and overcharge claims. Overcharge claims were pro rated among the roads interested in the haul. Loss and damage claims were also pro rated this way unless occasioned by plaintiff in error's negligence in which case it paid the whole amount (Rec., pp. 58 and 59). The extent of claims thus adjusted and paid is shown on Record pages 83 and 84.

Contracts with the different railroad companies all provide for a division of revenue on freight between plaintiff in error and the railroad company, the share of plaintiff in error being usually 12½ per cent of the gross revenue on freight carried in its cars (Rec., p. 59).

Taxes are assessed against its cars in the states where its cars move and these taxes are paid by plaintiff in error (Rec., p. 59).

A description of a car movement from Chicago to the west and from thence to the east is illustrative of all car movements. Every morning plaintiff in error is notified by its inspector at the shops, of the number of cars that are fit for service and these cars it then distributes to western connections for dairy traffic and also to Chicago team tracks for Chicago trade and a record is made of this distribution (Rec., p. 85). This distribution is first made by telephone and is followed by a letter (Rec., p. 85). On the following morning the office receives a report showing the distribution of cars as made (Rec., p. 86, and plaintiff's exhibit 27). This report is then checked and sent to the car accountant (Rec., p. 86). When

the car accountant has made the proper entry in his record he places a tag bearing number of a particular car, upon a hook on a board that represents a particular line of railroad, each railroad having its own board or separate line of hooks, and as the car passes from one line to another the tag is also changed to another proper hook. All of the cars are kept track of in this manner (Rec., pp. 86 and 87).

When the car passes from a western line to the Grand Trunk Western there is a report made to plaintiff in error, and similarly when it passes from one road to another (Rec., p. 87 and plaintiff's exhibit 30). When the Grand Trunk Western receives the car it waybills it and sends a copy to plaintiff in error who causes it to be checked with the shipper's advices as to icing, destination, commodity, consignee and rate. If there be any error the billing station is communicated with and the error corrected (Rec., pp. 87 and 88). Plaintiff in error also requires that it be furnished with a forwarding report which shows the time a car is received at a station and the time forwarded (Rec., p. 88). After plaintiff in error has checked the billing it notifies the shipper of the passing of the car through Chicago gateways, the date forwarded, to whom forwarded and the contents of the car (Rec., p. 88). A report, called a manager's report is then made up in plaintiff in error's office the purpose of which is to advise its eastern representatives and its car accountant of the passing of the car through Chicago gateways (Rec., p. 88). When the car passes off the line of the Grand Trunk Western at Port Huron, another report is made to plaintiff in error and likewise when the car passes Black Rock at Buffalo (Rec., pp. 88, 89). When the car reaches

New York a report is sent plaintiff in error by its agent in New York (Rec., p. 89). The different icing stations along the line send in icing reports to plaintiff in error (Rec., p. 89). The record contains letters, circulars, telegrams and the like which illustrate how shipments are diverted, movements supervised, shippers notified of delays, damage, etc., and generally the care and supervision exercised by plaintiff in error over traffic carried in its cars (See various papers comprising Exhibit 45, inserted between Record pages 90 and 91).

Plaintiff in error made a contract with the Director General of Railroads, covering the use, during Federal control, of its property taken over by the Government. This contract provided for annual compensation in the sum of \$72,855.59 (Rec., pp. 59-79).

Plaintiff in error's property was returned to it at the termination of Federal control on March 1, 1920, and was operated by it during the guaranty period, being the six months period ended September 1, 1920.

During the period of Federal control the Director General cut off all divisions of revenue to which plaintiff in error was entitled under its contracts with the railroad companies. When it was known that Federal control was to end, plaintiff in error sought to renew these contracts, but was unsuccessful (Rec., p. 79).

The result of operation of plaintiff in error's property for the six months' guaranty period was a loss of \$176,142.78 (Rec., p. 80 and see plaintiff in error's Exhibit 24, opposite Record page 84).

Plaintiff in error accepted the provisions of Section 209 of the Transportation Act and seasonably filed such acceptance with the Interstate Commerce Commission (Rec., pp. 6-8, and 80).

Plaintiff in error requested the Commission to ascertain and certify to the Secretary of the Treasury the amounts necessary to make good the guaranty to it contained in Section 209 aforesaid (Rec., pp. 16-21), but the Commission refused to do this, alleging as a reason that plaintiff in error is not a carrier by railroad within the meaning of said section (Rec., pp. 21-23).

On February 20, 1922, in a proceeding under Section 20a of the Act to Regulate Commerce, in which was sought the authorization of the Commission to the holding by officers of the Grand Trunk Railway Company of official positions in the corporate organization of plaintiff in error (Rec., pp. 92-111), the Commission held that plaintiff in error is a common carrier by railroad (Rec., p. 112-120).

Plaintiff in error's articles of incorporation are in evidence (Rec., p. 80).

Plaintiff in error seeks in this proceeding to secure the issuance of a writ of mandamus commanding the Interstate Commerce Commission to ascertain and certify to the Secretary of the Treasury the amount required to make good the guaranty to plaintiff in error under the provisions of Section 209 aforesaid (Rec., pp. 2-6).

The case was tried in the Supreme Court of the District of Columbia upon the foregoing facts and the court ordered that the petition herein be dismissed, the rule to show cause why a writ of mandamus should not issue, be discharged, and that the defendant recover its costs of defense (Rec., pp. 29-31).

From the judgment entered pursuant to the direction of the trial court an appeal was taken to the

Court of Appeals of the District of Columbia (Rec., p. 31). The Court of Appeals affirmed the judgment of the court below (Rec., p. 128). Upon the refrigerator company's application, a writ of error to the Supreme Court of the United States was allowed and bond fixed at three hundred dollars (Rec., p. 129). Writ of error was issued, bond given and approved and a citation issued (Rec., pp. 129 and 130).

ASSIGNMENT OF ERRORS.

1. The court erred in holding that plaintiff in error is not a carrier by railroad within the meaning of Section 209 of the Transportation Act, 1920.

2. The court erred in holding that plaintiff in error is not subject or entitled to the guaranty provisions of Section 209 of the Transportation Act of 1920.

3. The court erred in denying the relief prayed for in the petition herein.

4. The court erred in affirming the judgment of the lower court, the Supreme Court of the District of Columbia (Rec., p. 131).

ARGUMENT.

I.

THE GUARANTY SECTION.

The language of Section 209 of the Transportation Act of 1920, pertinent to this case, is as follows:

Sec. 209 (a) "When used in this section—The term 'carrier' means (1) a carrier by railroad or partly by railroad and partly by water, whose

railroad or system of transportation is under Federal control at the time Federal control terminates, or which has heretofore engaged as a common carrier in general transportation and competed for traffic, or connected, with a railroad at any time under Federal control; and (2) a sleeping car company whose system of transportation is under Federal control at the time Federal control terminates; but does not include a street or interurban electric railway not under Federal control at the time Federal control terminates, which has its principal source of operating revenue urban, suburban, or interurban passenger traffic or sale of power, heat, and light, or both;

"The term 'guaranty period' means the six months beginning March 1, 1920.

"The term 'test period' means the three years ending June 30, 1917; and

"The term 'railway operating income' and other references to accounts of carriers by railroad shall, in the case of a sleeping car company, be construed as indicating the appropriate corresponding accounts in the accounting system prescribed by the commission.

"(b) This section shall not be applicable to any carrier which does not on or before March 15, 1920, file with the commission a written statement that it accepts all the provisions of this section.

"(c) The United States hereby guarantees—

"(1) With respect to any carrier with which a contract (exclusive of so-called cooperative contracts or waivers) has been made fixing the amount of just compensation under the Federal control act, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than one-half the amount named in such contract as annual compensation.

"(g) The commission shall, as soon as practicable after the expiration of the guaranty period ascertain and certify to the Secretary of

the Treasury the several amounts necessary to make good the foregoing guaranty to each carrier. The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of each such carrier upon the Treasury of the United States, for the amount shown in such certificate as necessary to make good such guaranty. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated."

II.

CONSTRUCTION OF THE PHRASE "CARRIER BY RAILROAD" BY THE INTERSTATE COMMERCE COMMISSION.

The Interstate Commerce Commission construed the words "carrier by railroad" appearing in the above section as meaning a railroad company operating as a carrier.

The opening statement in the brief of counsel for the Commission in the court below declares that

"The term 'carrier by railroad,' in the ordinary sense of the word, means a railroad company operating as a carrier."

In this way the Commission easily disposed of the refrigerator company as a claimant because confessedly it was not a railroad company operating as a carrier.

Doubtless the conclusion of the Commission would have been right if Section 209 (a) read "the term carrier means (1) a carrier by railroad or partly by railroad and partly by water, *whose railroad* is under Federal control at the time Federal control terminates," without including the words "*or system of*

transportation,” but the introduction of the disjunctive phrase “or system of transportation” makes impossible a construction which confines Section 209 to railroad companies operating as carriers. If Congress intended to confine Section 209 to carriers operating railroads, why did it not stop with the words “*whose railroad, etc.?*” Why add the disjunctive “*or system of transportation?*” Certainly there *were* carriers by railroad who operated railroads, and just as certainly there *were* “carriers by railroad” with “systems of transportation,” who did not operate railroads. If the first only were intended, why describe the second? There *were* the two classes. With only one in mind, why include both? The purpose of Congress in this guaranty section was to insure public transportation by railroad during the guaranty period. Both operating railroad carriers and carriers by railroad with systems of transportation who were not operating railroad companies, participated in and contributed to public transportation by railroad. Why attempt to defeat the purpose of Congress by forcing a construction which eliminates the latter class by actually eliminating the words of the statute referring to that class? Why not let the statute have its way? It includes both classes. There is nothing doubtful about it. It needs no construction and certainly does not permit a construction which does violence to both its purpose and its language, a construction which reads an entire phrase out of the statute, a phrase which neither conflicts with its purpose nor confuses its meaning, but is, on the contrary, clear, enlightening and comprehensive. The Interstate Commerce Commission and its counsel seem to have been led into error by assuming that the case of Wells Fargo &

Co. vs. Taylor, 254 U. S. 175, controls this case. The Commission, in its opinion, quotes approvingly from that case the words "in our opinion the words 'common carrier by railroad,' as used in the act, mean one who operates a railroad as a means of carrying for the public, that is to say, a railroad acting as a common carrier," and counsel for the Commission in his brief likewise adopts that language as controlling. They have very evidently disregarded the words of the quoted opinion "*as used in the act*," that is, the Federal Employers' Liability Act, which involves and presents an altogether different situation. The words "common carrier by railroad" in that act may well mean something entirely different from the words "carrier by railroad" in section 209 qualified by the entire content of that section. The Federal Employers' Liability Act did not contain any disjunctive phrase referring to "system of transportation." Some light is afforded by the opinion of this Court in the case of Missouri Pacific Railroad Company vs. Ault, 256 U. S. 554, where in passing upon the term "carriers" as used in section 10 of the Federal Control Act (Public No. 107—65th Congress, approved March 21, 1918), this Court said "Here the term 'carrier' was used as it is understood in common speech, meaning the transportation systems as distinguished from the corporations owning or operating them."

III.

THE CONTRACT WITH THE DIRECTOR GENERAL OF RAILROADS.

Very evidently the Director General of Railroads,

Mr. Walker D. Hines, a distinguished lawyer and a recognized expert in railroad matters, in dealing with this refrigerator company, understood the real situation because, in making a contract under the Federal Control Act with this company, he used the standard form of railroad contract, modified to suit the situation of the refrigerator company as a carrier by railroad, whose "system of transportation" had been taken over. In other words, he used the disjunctive phrase as indicating a carrier by railroad which did not operate the railroad. He recognized the refrigerator company as an owner of a "system of transportation." Referring to the contract he made, as Director General, with the refrigerator company (Exhibit 14, section 2, Record, pp. 59-62) we find, under the heading "*property taken over*," the words "the company's refrigerator car line and *system of transportation* of which the President has taken over possession, use, control and operation shall be considered as including

(a) the following properties:

All refrigerator cars, including cars under lease from Missouri River Despatch, and also all other property of the company, with the appurtenances thereof, *used in carrying on its business of furnishing a refrigeration transportation service*, the revenue of which were used, or which, if the property had been then owned by or leased to it and had been revenue-bearing would have been used in computing the company's standard return."

In making this contract the Director General acted as the personal agent of the President of the United States, duly authorized by Congress, and in section

1 of the contract (Record, p. 61) we find this language: "This agreement shall be binding upon the United States, the Director General and his successors, and upon the company, its successors and assigns." The *status*, therefore, of the refrigerator company as the owner of a "system of transportation," so far as the United States is concerned, has become *contractual*, in other words, no longer open to dispute. How then can counsel say that the refrigerator company had no system of transportation and was *a mere lessor of cars*? If so how could it have a "system of transportation?" True, it might have a system of transportation other than by railroad and thereby fail to be a "carrier by railroad," under section 209 (a). Confessedly whatever system of transportation the refrigerator company had was by railroad. Therefore, the status of the company as the owner of a system of transportation being contractually established, and its transportation or carriage being confessedly by railroad, the only question here open to argument is this: Was the refrigerator company a "carrier"? It may well be argued that the *carrier nature* of the refrigerator company is, like its ownership of a system of transportation, established by the contract with the Director General of Railroads. The words of the contract above referred to concerning the taking over of all the refrigerator company's property "*used in carrying on its business of furnishing a refrigeration transportation service*" are very persuasive to that conclusion, but we will go beyond that, and discuss the evidence bearing upon that question of fact, and refer to some of the cases thereto applicable.

IV.

THE PLAINTIFF IN ERROR IS A COMMON CARRIER.

In this discussion we will assume that the term "carrier" here used means a common carrier.

Without undertaking to formulate any complete, inclusive and exclusive definition of a common carrier, it is sufficient to say that a common carrier is one who undertakes as a business, for hire or reward, to carry from one place to another the goods of all persons who may apply for such carriage providing the goods be of the kind which he professes to carry. As an incident to the nature of the common carrier and as illustrative of that nature is the liability of the common carrier for failure or refusal to perform the acts which he holds himself out to do.

The adjudicated cases as well as the text book discussion unquestionably support the above definition of a common carrier. Hutchinson on Carriers, section 47.

It may be helpful to refer to some of the cases which exclude from the foregoing definition, that is make immaterial and non-essential to that definition, numerous and important facts which frequently co-exist with that definition and perhaps therefore rather naturally lead the mind to the inference, unaided by the adjudications, that these co-existent facts constitute elements in the definition of a common carrier.

The cases are cited showing by way of illustration and perhaps more forcibly by exclusion, that the controlling definition of a common carrier is very general in its nature and is indicated by the very general attitude which a carrier assumes towards the shipping

public, and that many important duties which common carriers generally perform in connection with their business of common carriage are not at all essential to the broad general definition.

(a) "Ownership of the means of transportation is not essential to constitute a common carrier."

Cownie Glove Co. vs. Merchants Despatch Co., 106 N. W. 749; Bank of Kentucky vs. Adams Express Co. 3 Otto 174; American Express Co. vs. Ogles, 81 S. W. 1023; Kettenhofer vs. Globe Transfer and Storage Co., 127 Pac. 295; Merchants Despatch Co. vs. Bloch, 86 Tenn. 392.

(b) Incorporation as a common carrier is neither essential nor necessary. Advertisement as a common carrier is sufficient.

Jackson Architectural Iron Works vs. Hurlbut, 158 N. Y. 34; Cage vs. Pool's Assigns, 108 Kentucky 124; Gurley vs. Armstead, 148 Mass. 267; Buckland vs. Adams, 97 Mass. 124.

(c) The fact that only a small part of the traffic carried is the property of others is immaterial. United States vs. Louisiana and P. R. Co., 234 U. S. 1, 24.

(d) We assume without the citation of authority that the ownership of capital stock, wherever that ownership lies is wholly immaterial when we are considering the nature of a common carrier. The court is doubtless familiar with the very extended use in the railroad world of the so-called "subsidiary corporation," the capital stock of which is owned by the parent company, and with the further fact that the subsidiary is nevertheless a common carrier and is everywhere so regarded.

(e) The fact that a common carrier may disregard legal requirements, as for instance, the filing of tariffs and the making of reports to the Interstate Commerce Commission, does not detract from its character as a common carrier. By such disregard it can not oust the Interstate Commerce Commission of jurisdiction or lessen its liabilities as a common carrier.

Without further illustration we may now consider the facts bearing upon the common carrier nature of the plaintiff in error, namely, those facts which show that the plaintiff in error undertook as a business, for hire or reward, to carry (in other words to cause to be carried) from one place to another the goods of all persons who might apply for such carriage provided the goods be of the kind which the plaintiff in error professes to carry.

We direct the attention of the court to several of the more important and probative facts, and especially to exhibit 11 (Rec., p. 57, and exhibit immediately preceding). This is the printed circular issued in the name of the New York Despatch Refrigerator Line, and the National Despatch Refrigerator Line, which are the trade names of the plaintiff in error. This circular was periodically printed in large numbers and periodically circulated to shippers as well as other interested parties.

Without making any extended argument upon the language of this exhibit we may say without fear of contradiction that it constitutes an advertising and a holding out by the plaintiff in error to shippers generally interested in the transportation of the traffic which the plaintiff in error handled that it would carry (that is cause to be carried) all of this class of traffic which might be offered to it. And that pursuant to

this holding out, it did actually for a period of over twenty years carry on the business which it advertised to shippers that it would carry on.

Further plaintiff in error had a specially trained organization by which the shippers were brought and kept in direct personal contact with the plaintiff in error, and were advised by this special organization as to the best manner and method of preparing, packing, handling and shipping this class of traffic. In this very personal way the plaintiff in error built up a very large transportation business in the course of which the volume of its traffic doubled and the good will of the plaintiff in error as a carrier became established, and the interested shippers throughout the country came to know the plaintiff in error by its trade names as a most desirable and efficient carrier. We may say also without fear of contradiction from the evidence that the shippers who dealt with the plaintiff in error knew no other carrier and had in mind no other carrier. They did not know and they did not give any thought to the movement of the cars which contained their shipments other than as the plaintiff in error represented that movement. Probably very few if any of the shippers, knew or cared over what line of railroad the cars containing their shipments actually moved. In short, those shippers knew the plaintiff in error and it alone in the matter of their shipments.

After considering all of the evidence bearing upon the features of this case which are now under consideration, it would seem impossible to assert that as to these shippers this plaintiff in error was not a common carrier, and we here desire to restate and

emphasize the conclusion that the relations between the shippers and the plaintiff in error are the controlling facts which characterize plaintiff in error as a common carrier. These relations are sufficient for the purposes of this case and we might safely rely upon them without further discussion. We do not wish, however, to dismiss from attention certain other items of evidence which may add to and support the foregoing statements. We desire to have considered all of the evidence, and particularly the fact that the plaintiff in error constantly issued bills of lading in its own name and in the ordinary form; also the important fact that the plaintiff in error under its own trade names periodically printed and distributed to its shippers and others a rate or tariff sheet, Exhibit 43 (Rec., p. 89 and page immediately preceding), and whenever the rates mentioned in these sheets were changed, the circular was reprinted to show the changes and again distributed. In this way the plaintiff in error kept its shippers constantly informed as to the rates under which their shipments would travel. True, the plaintiff in error did not file the tariffs with the Interstate Commerce Commission, as perhaps it ought, but it did use tariff rates and tariff sheets under its own names in dealing with its shippers, and in this way performed another important duty respecting its common carriage. We repeat that failure to actually comply with the requirements of the Act to Regulate Commerce in this respect is immaterial so far as the character of the plaintiff in error as a common carrier is concerned. Failure to comply with such requirements does not prevent plaintiff in error from being a common carrier. We are all quite aware that for a long time after the passage of

the Act to Regulate Commerce, disregard of some of the requirements of that act by railroad companies was quite common, but it has never been asserted by anybody that the failure of the railroads in these respects made them any less common carriers.

And in conclusion upon this branch of the case, we desire to submit to the Court the common and ordinary test of a common carrier, namely, under the undisputed facts in this case could the plaintiff in error have refused a shipment of commodities belonging to the class which it handled, tendered to the plaintiff in error by a shipper in accordance with the custom and practice established by it, and escape from legal liability for damages by asserting that it was not a common carrier?

We think there is but one answer to this inquiry. Indeed we may say that the Interstate Commerce Commission has held the plaintiff in error to be a common carrier and in passing we desire to refer to Exhibit 46 (Rec., pp. 112-121) which is a certified copy of a decision of the Interstate Commerce Commission made under sub-division 12 of Section 20a, that being a new section of the Interstate Commerce Act created by Section 439 of the Transportation Act of 1920.

This sub-division 12 declares that after December 31, 1921, it shall be unlawful for any person to hold position of officer or director of more than one carrier, unless such holding shall have been authorized by order of the Commission, upon due showing, in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby.

The Court will note that this sub-division deals with

common carriers. Under this section the Grand Trunk Railway Company of Canada made application to the Interstate Commerce Commission on December 19, 1921, for permission for certain persons to hold at one and the same time official positions on the Grand Trunk Railway Company of Canada and certain other common carriers including the plaintiff in error (Rec., pp. 92-111).

This application was heard and on February 20, 1922, the Interstate Commerce Commission made the order, copy of which is in the record (Record, pp. 112-120). It appears from this order that the Commission disallowed the application with reference to certain of the companies included in the application for the reason that such excluded companies were not "common carriers by railroad" (Rec., p. 120).

By the same order, however, the Commission granted the application of the Grand Trunk Railway Company with respect to plaintiff in error, very clearly thereby holding that it was regarded at that time by the Interstate Commerce Commission as a "common carrier." True, the Commission recalled that order after its attention was called to it in the court below, but such recall does not destroy the effect.

V.

SLEEPING CAR COMPANIES.

Perhaps we should in this brief refer to the reason which underlay the particular mention of sleeping-car companies. It has seemed to us that the reason for this lies in the fact that sleeping-car companies

have never been considered and are not now considered as common carriers by railroad. True an amendment to the Act to Regulate Commerce brought sleeping-car companies within that act and arbitrarily so. Congress evidently concluded that the importance of the sleeping-car companies required their submission to the Act to Regulate Commerce not because they were common carriers but because they ought to be regulated. By their inclusion in the Act to Regulate Commerce, they became no more common carriers than they were before and their inclusion in the Act had no effect whatever upon their status as common carriers. They were simply subjected to the control and regulation of the Interstate Commerce Commission. This being true, it is quite apparent that had they not been specially mentioned in Section 209, the argument would at once have been made that sleeping car companies were not common carriers by railroads and therefore not within the purview of Section 209; that they were simply within the scope of the Federal Act to Regulate Commerce and were brought within that scope arbitrarily because of certain admitted necessities of regulation. It was doubtless to avoid this very argument that they were especially named in Section 209. And here again the reason for including them within the benefits of Section 209 is apparent, that is, sleeping-car accommodation for the traveling public had become so necessarily a part of passenger transportation that it was necessary to protect that feature of transportation and bring it within the benefits of the guaranty section, although the sleeping-car companies were not themselves common carriers.

This subject is further illustrated by Section 422

of the Transportation Act of 1920 which amends the Interstate Commerce Act and creates therein a new section to be known as Section 15a, the relevant portion of which reads as follows:

“Section 15a: (1) When used in this section the term ‘rates’ means rates, fares, and charges and all classifications, regulations, and practices, relating thereto; the term ‘carrier’ means a carrier by railroad or partly by railroad and partly by water within the continental United States, subject to this Act, excluding (a) sleeping-car companies and express companies.”

It thus appears that the Transportation Act of 1920 when dealing with the amendment to the Interstate Commerce Act relating to rates carefully excluded sleeping-car companies and doubtless for the reason that while they had been formerly brought within the Interstate Commerce Act for certain purposes, they were nevertheless not regarded as common carriers.

VI.

CASES CITED IN COURT BELOW BY DEFENDANT IN ERROR.

We desire to refer to cases which will be cited by counsel for the defendant, and particularly perhaps to *Wells Fargo vs. Taylor*, 254 U. S. 175, which defendant's counsel will rely upon. So far as we can discover his ground for reliance, it is that the definition of the words “common carrier by railroad” which the Court made in that case, extends to the words “carrier by railroad” in Section 209, that is, that the definition given by the Court in the *Taylor* case carries over to and controls the words used in Section

209. Of course a very brief examination destroys the ground of counsel's reliance because the definition of the words "common carriers by railroad" in the Taylor case was a definition of what those words meant in the *Employers' Liability Act* which was the ground of the action in which the decision was made, and the Court *expressly confined its definition* to that act by saying:

"In our opinion the words common carrier by railroad, *as used in the Act.*"

In short, the Court said *in construing this particular Employers' Liability Act*, we hold that the words "common carriers by railroad" mean common carriers who operate railroads. There were several cogent reasons for limiting the scope of the decision in this respect. In the first place, the Court was not called upon to make and was not in fact making a general definition of the term "common carriers by railroad." It was deciding a case involving that much controverted legislation commonly called "employers' liability" and further, was considering the construction of the *Employers' Liability Act* involved in the case and the Court was, as we have said, careful to confine its language "*to the act in question.*" But beyond this, and as a reason, and probably the only reason which led the Court to so construe the words "common carriers by railroad" was the legal principle that, a legislative grant of a remedy to a specified body of citizens, excluding from the benefits of that remedy all citizens of the United States who were not of the specified body, would fall under the condemnation of class legislation which had within it no classification. It is common knowledge to every lawyer that legisla-

tion must be for the benefit of all citizens, unless there is supporting the particular legislation, a reasonable classification. The reasonable classification which underlay the "Federal Employers' Liability Act" was the extra-hazardous nature of railroad employment and this extra-hazardous nature which supported the classification upon which the legislation rested pertained generally only to the operative side of railroads and could not rightfully and lawfully be extended to employees of railroads or common carriers who were not subjected to the extra hazards. Therefore, the Court said *for the purposes of this case* we hold that the words "common carrier by railroad" mean common carriers who operate a railroad and whose operatives are therefore within the extra hazard of the operating employment. Whether or not it appears from the opinion that the Court reasoned this out in detail, is immaterial because of course the Court had in mind the doctrine of classification which it had itself established by a long line of decisions. In short, had the Court not so defined those words, it would have included within the benefits of the Federal Employers' Liability Act a very large number of employees of common carriers by railroad whose employment subjected them to no extra hazard whatever, and therefore the Court would have found itself confronted with the invalidity of the statute itself. This definition of those words in that particular act was absolutely necessary to prevent the catastrophe which overtook the former Federal Employers' Liability Act in this Court. Again, in short, for the purposes of that act, the Court knowing that there were a very large number of common carriers by railroads who were not operators of railroads, excluded from the

benefits of that act the employees of non-operating carriers, while Congress in enacting Section 209 very evidently with deliberate intention, because it knew that there were many common carriers by railroads who were not operating railroad carriers, used language which unlimited by definition necessarily included non-operating common carriers by railroad, and there was a reason for this. The purpose of the guaranty provisions of the Transportation Act of 1920 was the protection not alone and perhaps not chiefly of the common carriers by railroad, but the protection of transportation in the interests of the public generally. Unquestionably that idea of insuring public transportation during a limited reconstruction period was the controlling and moving purpose of Congress. Congress recognized the absolute, vital necessity of continuing railroad transportation generally, even at the expense of the Treasury of the United States and the public funds. Having this purpose definitely in mind, and knowing perfectly well that there were a very large number of common carriers by railroad, both in fact and in law, who were not operating railroad carriers, Congress beyond any question used the language "carriers by railroad" with the intention of protecting and insuring the movement of traffic not only by operating railroad carriers but by common carriers who through various arrangements brought about public transportation without directly operating railroads. Had Congress any other purpose in mind, had it in mind the definition which the Supreme Court of the United States placed on somewhat similar language in the Federal Employers' Liability Act, Congress would have failed in its purpose, that is, it would have protected the commerce

which moved by direct railroad operation, and left the vast mass of commerce which moved through the agencies of non-operating railroad carriers without protection. Bearing this very broad distinction in mind and at the same time the necessary conclusion that Congress intended to protect the public transportation generally, how is it possible to argue that a definition of this Court which was expressly confined to the Act involved in the case extends beyond it in disregard of the language of the Court, and applies to another statute which was enacted for an entirely different purpose and which needed for its support no such definition as the Court in sustaining the Employers' Liability Act. Such extension of limited definitions can bring nothing but confusion into the law, particularly when there is nothing in the case which even remotely justifies the extension of the definition.

What seems to be the conclusive inference to be drawn from this Taylor case is added to by the fact that the Court in its decision stated that its view was enforced by:

"the mention of cars, engines, tracks, road beds and other property pertaining to a railroad;

"by the obvious reference in the latter part of Sections 3 and 4 to statutes requiring engines and cars to be equipped with automatic couplers, standard draw-bars and other appliances intended to promote the safety of railroad employees;

"by the use of similar words in other closely related acts which apply only to carriers operating railroads."

The Court in the Taylor case stated that its decision was influenced by the fact that similar words in the original Interstate Commerce Act had been construed as including carriers operating railroads but not express companies doing business as there shown and it cites in support of that position re Express Companies, 1 I. C. C. Rep. 349; United States vs. Morsman, 42 Fed. 448; Southern Indiana Express Co. vs. United States Express Co., 92 Fed. 1022; American Express Co. vs. United States, 212 U. S. 522. The Court doubtless cited these cases as illustrating generally its position taken in the Taylor case but not as indicating that these cases held that the express company is not a carrier by railroad because the merest inspection of these cases indicates that the decision in each of them rested entirely upon the language "*wholly by railroad*" as it appeared in the Federal Act to Regulate Commerce.

The only case in which the status of express companies as carriers by railroad was before the Interstate Commerce Commission was in the case Re: Express Companies, Vol. 1, I. C. C. Rept. 677-682, in which was involved the question as to whether express companies were subject to the Act to Regulate Commerce, which placed under its jurisdiction

"common carriers engaged in: (a) the transportation of passengers or property wholly by railroad or partly by railroad and partly by water, etc."

No such question was made in the decision of the Commission but that express companies were carriers by railroad. They were held to be not subject to the Act because they were not carriers *wholly by railroad*.

We quote the language of the report of the Commission in this case:

"It is said that the words of the Act above quoted, namely: 'wholly by railroad or partly by railroad and partly by water,' do not describe the transportation business conducted by express companies, for the reason that their business is largely upon water routes disconnected from railroad lines and upon stage coach routes, as well as by teams used for the collection and delivery of goods and for their transportation between the termini of connecting lines. A very large proportion of their traffic is by rail. Their exclusion from the operation of the statute upon the ground that in cities and large towns it is customary for express companies to collect and deliver the freight would seem to be too refined a construction to place upon the law. * * *."

"The word 'wholly' in the first section of the Act may have been used in contradistinction to the word 'partly' in the next clause—'wholly by railroad or partly by railroad and partly by water' and not as a limitation upon the method of carriage with the meaning by railroad solely, or by railroad and not otherwise as claimed by the express companies.

"Nevertheless, the literal application of the word 'wholly' would exclude a large part of the business transacted by express companies for it can truthfully be said as to the larger percentage of their shipments that they are not 'wholly by railroad' or 'partly by railroad and partly by water.' A great amount of team and messenger service is involved as well as the use of other vehicles of transportation which are not within the language of the Act. The use of that word in a section which was evidently framed with the

greatest care affords a fair foundation for the claim that the Act does not describe the modes of transportation employed by express companies with sufficient precision to bring them within its terms."

This decision of the Commission was followed by the case of *United States vs. Morsman*, 42 Fed. 448, in which the same question was up as to whether express companies were subject to the Act to Regulate Commerce and the court in its decision adopted and followed the report of the Commission in the case of the express companies and held that the Act to Regulate Commerce did not apply to express companies because they were not carriers *wholly by railroad*.

The case of the *American Express Company vs. United States*, 212 U. S. 522, is a case in which was involved the right of express companies to issue franks for transportation of property, and the Court held that the language of the Federal Act to Regulate Commerce relating to the issuance of free passes did not include the issuance of franks by express companies for the transportation of freight. This conclusion was very evidently reached because the passes authorized by the Federal Act to Regulate Commerce were passes for the transportation of passengers and not for the transportation of freight. It is therefore apparent that the question whether or not express companies were carriers by railroad was not involved. It very apparently made no difference whether they were carriers by railroad or not if the language relating to passes did not include franks for free transportation of freight. In short, the permissive language relating to the issuance of passes by railroad

companies did not include any permission to the express companies.

VII.

OPINION OF THE COURT OF APPEALS.

In conclusion we will refer to some of the matters which were discussed in the brief of Respondent in the court below, to certain statements of facts referred to in the opinion of the Court of Appeals and to the legal propositions relied upon by that court.

In the opinion of the Court of Appeals is found this language:

“It (the refrigerator company) owns 1,300 refrigerator cars, but does not own or control any motive power, road bed, tracks or other railroad property or facilities besides the cars. These cars are rented to certain railroad companies and are used in the transportation of dairy products by the lessees from the west to the east” (Rec., p. 125).

The statement that these cars are rented to the railroad companies was taken from respondent's brief and not from the record. There is no language in any of the contracts introduced in evidence nor in any of the original testimony produced which warrants any such statement. We direct attention to plaintiff's exhibit 1 (Rec., p. 34) which is a contract between the refrigerator company and certain railroad companies. This contract was afterwards changed in some respects, but in the main feature, to wit, the business to be transacted under the contract, remains the same in subsequent contracts and was

never changed by any railroad company with which the refrigerator company had contracts. This contract recites the fact that the parties thereto had contracts with each other regarding the transportation of refrigerator business, and then states that the parties

“also desire, for the public and their own convenience and advantage, to establish under a new contract, a refrigerator line over the roads of the parties of the second part, and their connections, for the accommodation of refrigerator traffic between western and eastern points and districts reached via the roads of the parties of the second part, and their connections, including the traffic secured by the party of the first part and offered for transportation via the Niagara frontier and various junction points over other roads than those mentioned herein, having proper connections and working arrangements with one or more of the parties of the second part, and

“Whereas, the party of the first part owns a large number of refrigerator cars, and now and for many years past has controlled a large amount of refrigerator traffic,

“Now, therefore, the parties hereto mutually agree as follows:

“First. The parties of the second part agree to give the cars and business of the party of the first part, as favorable through rates, time and working facilities of every kind, as are given to the cars and business of any other refrigerator line operating over their railroads, and to place the said party of the first part upon as favorable footing in every respect, for all its traffic, as the most favored refrigerator line operating via other routes or railways between the same as similar points or districts.”

The other parts of this contract are entirely consistent with the portion above quoted, and go to show that it was the intention to create or to continue a fast freight line over the railroads of the parties of the second part. It was a complete and separate business, and under the contract to be conducted and supervised by the officers of the refrigerator company. The traffic carried in the refrigerator cars forwarded east was to be that furnished by the refrigerator company. We repeat there is nothing in the subsequent contracts which changes the nature of this business. There is nothing to support a statement that the refrigerator company rented its cars to the railroad companies. It may be urged that there is, in one of the subsequent contracts (Plaintiff's Exhibit 2 and on Rec., p. 42, in subdivision twelve), this language:

"The railways agree to pay to the car company for hire of refrigerator cars the current rate paid generally by the other railway companies operating from Chicago eastbound to New England and Trunk Line territory, to similar refrigerator car companies (other than to shippers owning their own cars) whether the same be on a mileage or per diem basis, except that under no circumstances shall the compensation exceed three-quarters of a cent per mile run or equivalent thereof."

Perhaps the court founded its statement that the cars are rented upon the expression, "hire of refrigerator cars." If so, it was in error. The term, "hire of freight cars," is merely an accounting term prescribed by the Interstate Commerce Commission and included within it are all mileage and per diem

charges for all interchange cars and a car is in interchange when it is on the railroad of any company other than its owner. Thus, all freight cars in the United States that are on tracks other than those of the company owning the cars are in interchange and the owner of the car is paid per diem or mileage, even though the car be at the time engaged in transportation of freight originating on the line of the owning company. This term, "hire of freight cars," is found in Account No. 536, of "Classification of Income, Profit and Loss, and General Balance Sheet Accounts for Steam Roads," prescribed by the Interstate Commerce Commission, and is as follows:

"Hire of freight cars—Debit balance. This account shall include, except as provided for in the classification for investment in road and equipment, the net debit balance of (1) amounts receivable accrued for the use of the accounting company's freight cars leased or interchanged, and (2) amounts payable accrued for the use of the freight cars of other carriers, leased or interchanged and for the use of freight cars of individuals and companies not carriers."

In contracts it is of course desirable that language referring to charges and credits should be so used as to direct the attention of the accounting officer to the account to which an item should be debited or credited and this affords ready and complete explanation for the use of the expression "hire of refrigerator cars" used in this contract. The business is not changed. The business is still the operation of a refrigerator line for the transportation of refrigerated dairy products and not a contract for leasing, and we wish to emphasize the fact that all these contracts

look to the organization of a separate business and that the testimony and record show that the business was organized and conducted separately down to the day when the business and system of transportation was taken over by the President of the United States under his proclamation of December 26, 1917.

Again the Court of Appeals say that:

“The articles of incorporation do not say it was to become a carrier by railroad or otherwise”
Rec., p. 125).

We discussed this question in the main brief, but here we wish to say that the business of the refrigerator company remained the same for at least twenty years prior to Federal control. That if it held itself out a common carrier, transacted business as a common carrier, the fact that no mention of that phase of its business was made in its articles of incorporation could afford it no defense against a charge of liability as a common carrier nor can it be properly put forth as a defense to the claim here. The Interstate Commerce Commission has passed upon a similar question. A company complained to the Interstate Commerce Commission and asked to have other carriers required to establish through routes and joint rates in connection with it. The defense was advanced that plaintiff leased its line from another company not a party to the proceeding; that the leasing company, a street railway corporation, was limited by law to the carrying of farm produce, garden truck, milk, merchandise and other light freight. The Commission said:

“The question of whether an electric line is en-

gaged in the general business of transporting freight is to be determined, however, by the nature and extent of its freight business rather than by a technical construction of the act under which the lessor of its lines was organized." *Michigan Railroad Company vs. Pere Marquette Railroad Company et al.* 74 I. C. C. 496, 498.

Again, the Court of Appeals says in its opinion:

"The railroad companies make out in their own names bills of lading covering the shipments moving in the refrigerator company's cars, except that as to some shipments originating in the west and reconsigned at Chicago, which constitute about ten per cent. of all shipments in its cars, the refrigerator company issues bills of lading on its own forms at Chicago covering the movement east of that city" (Rec., p. 125).

This statement is also taken from the brief of Respondent in the court below and is also erroneous. The evidence is as follows:

"These bills of lading (bills issued by the refrigerator company, Plaintiff's Exhibit 9, Rec., p. 56) are used when freight is reconsigned and also when it is originally billed to us. We handle freight out of Chicago on our own bills of lading. We handle about 12,000 cars of freight in one year, and we were handling that number when Federal control commenced, and had been for some time previously. When we issue a bill of lading the freight moves to destination on that bill, and in such cases no railroad bill of lading is issued unless the car is afterwards reconsigned. About ten per cent of all traffic moves on bills of lading which are issued by our company, and signed by me or by my agents. Some traffic moves without bill of lading.

"The shipper gets a receipt and he is satisfied. I should say that 50 per cent moves this way. The receipts issued at Chicago are on our form" (Rec., p. 56).

It thus appears that at least sixty per cent of the traffic of the refrigerator company moves on bills of lading or on receipts which are issued on the refrigerator company's form. Of course, these receipts are contracts for carriage just as much as a bill of lading.

As to this sixty per cent., the refrigerator company is clearly accountable as a common carrier, for as is elsewhere shown in this brief, it has for years advertised and held itself out as a common carrier, has offered to carry, and has prescribed terms upon which it would carry, to wit, the terms set forth in the rate sheets offered in evidence. The fact that these rates were rates mentioned in railway companies' tariffs in no way affects its status as a common carrier. The refrigerator company itself contracted, then, for the shipment of sixty per cent of the dairy products carried in its cars, so we submit that the court erred in its statement of the facts and its conclusions derived therefrom.

Again, the court says:

"The refrigerator company receives no payment or compensation of any kind from the shippers for transportation service" (Rec., p. 125).

This statement might be made with respect to much, if not most, of the merchandise which moves by freight. If charges are collected either at point of origin or destination and the shipment moves over the line of two or more carriers, the shippers pay no money to

at least one carrier. It is true the carrier receives its compensation in the settlement of interline accounts, but the refrigerator company receives its proportion in the settlement of accounts under the contract, and right here it may be pertinent to observe that it makes no difference that the contracts may refer to this compensation as commissions or as mileage. The whole contract shows that much more was involved in the service than a mere commission. It was in fact a division of the revenue, presumably, according to the service, or the estimated value of the service rendered by either party in the conduct of the business provided for by the contract.

Again, the court says "the refrigerator company files no tariff with the Commission." With respect to this we say that that fact can not determine the question as to the refrigerator company's status as a carrier; that the contracts in evidence provide that the railroad companies shall

"give the cars and business of the party of the first part (the refrigerator company) as favorable through rates, time and working facilities of every kind, as are given to the cars and business of any other refrigerator line operating over their railroads * * *" (Rec., p. 34).

In the rate sheets which it periodically issued to its trade, the refrigerator company advertised to carry at the rates published by initial lines in effect from and to the points mentioned in the rate sheets. The court further says that

"that the use of the term 'railway operating income of such carrier,' occurring in subdivision

(1) of (c) of the section (section 209 of the Transportation Act) enforces the contention that the refrigerator company is not a carrier by railroad. Its income cannot be spoken of correctly as a railway operating income" (Rec., p. 127).

With respect to the above statement of the Court the language used in the Federal Control Act, Public—No. 107—65th Congress, approved March 21, 1918, may be quoted:

"That the President, having in time of war taken over the possession, use, control, and operation (called herein Federal control) of certain railroads and systems of transportation (called herein carriers) is hereby authorized to agree with and to guarantee to any such carrier making operating returns to the Interstate Commerce Commission, that during the period of such Federal control it shall receive as just compensation an annual sum, payable from time to time in reasonable installments, for each year and pro rata for any fractional year of such Federal control, not exceeding a sum equivalent as nearly as may be to its average annual railway operating income for the three years ended June thirtieth, nineteen hundred and seventeen."

This Federal Control Act covered every activity taken over by the President's proclamation. It is admitted that the property of this refrigerator company was taken over. It is in evidence that it had a contract with the Director General of Railroads, and it appears from that contract that the Interstate Commerce Commission certified to the President the amount of the refrigerator company's income computed in the manner provided under section 1 of the Federal Control

Act. It might just as well be said that the Federal Control Act did not apply to the property of the refrigerator company because in section 1 there is used the term "railway operating income."

The Court of Appeals calls attention to *Ellis vs. Interstate Commerce Commission*, 237 U. S. 434, and says that it is unable to see why the ruling in that case should not be applied to the case at bar. The court overlooks the evidence in this case. It overlooks the fact that there has been established by contracts and by the acts of the refrigerator company a great transportation business owned and conducted by the refrigerator company; that it has held itself out as a common carrier advertised to carry for hire, made contracts for carriage for hire and is, through the arrangements contracted for with the railroad companies, able to carry out these engagements; whereas in the *Ellis Case* the private cars were merely rented to the railroad companies.

VIII.

BRIEF OF DEFENDANT IN ERROR IN THE COURT OF APPEALS.

Defendant in error in the court below stressed the fact that in the guaranty section the American Railway Express Company is specifically mentioned and that if it were a carrier by railroad it would be unnecessary to do this. A reading of paragraph (i) of section 209 of the Transportation Act affords a sufficient explanation for the mention of the American Railway Express Company by name, and that is that the guaranty to the American Railway Express Com-

pany was not that extended to other railway carriers, but a provision that the contract between the Director General of Railroads should remain in full force and effect during the guaranty period, insofar as the same constitutes a guaranty on the part of the United States to such carrier against a deficit in operating income, and this affords a complete explanation why the American Railway Express Company was singled out for special mention in the guaranty section.

Defendant in error also urged in the court below that during the guaranty period the refrigerator company was engaged only in renting cars and paid only for this service. The character of the business of the refrigerator company transacted during the guaranty period did not differ from that it had transacted before Federal control intervened. Federal control suspended the contracts. When Federal control ended and its property was turned back to it, it operated its business as before Federal control except that it was unable to renew at once its contracts with the railroad companies, consequently, was deprived of some compensation, and we submit that this is one of the conditions which the guaranty section was intended to cover. In this connection we urge that there is not an item in the accounts of the refrigerator company but that enters into the income or operating expense accounts of railroads that conduct their own refrigerator business. (See Exhibit 24 opposite record page 84). If the contracts had been renewed on March 1, 1920, the additional amounts paid by the railroad companies would have been properly charged, and would have operated to increase the amount due to them under the guaranty. So this fact can make no difference in the amount that the Government would be compelled to pay. The railroad companies with-

held revenue from the refrigerator company. Consequently, the amount paid by the Government to them was less. Payment to the refrigerator company under the guaranty will merely bring the situation back to where it would have been had the contracts been renewed at the time private control was resumed. This is the situation with which we are concerned. The Transportation Act and the guaranty section speak as of March 1, 1920, and situations that arise after that date are of no use in construing the law. Defendant in error again states in its brief that the refrigerator company had never regarded itself as a common carrier. That statement is hardly warranted by the facts, for we have shown, and the evidence discloses, that the refrigerator company had held itself out and contracted as a common carrier. That it was regarded as such is emphasized by the fact that in the contracts with the railroad companies it was thought necessary to incorporate a clause providing that:

“The Railways each agree to be individually responsible as common carriers and pay for all damage to or loss of freight while upon their respective roads, and if damage or loss shall occur which cannot be located, they each agree to pay their proportion based upon the rules of the Freight Claim Association” (Rec., p. 43).

Of course, if the railroad companies were common carriers or if they thought they were, such a provision in the contract would be entirely superfluous. So it must be that they intended to protect the refrigerator company against liabilities under the contracts which

it might make as a common carrier. Now, in this connection and also with regard to the question as to whether or not the refrigerator company is a carrier by railroad, we quote from Elliott on Railroads, vol. 4, p. 468, sec. 2106:

“Connected with the railroad service are many organizations, sometimes corporations and sometimes individuals (and they are sometimes in reality composed of several railroad companies), that engage in the transportation of goods as ‘fast freight lines,’ express companies and the like. Such organizations, whether incorporated or not, are often, in a limited sense, railroad carriers, and, in the strict sense, are common carriers. A transportation company not owning or controlling any means of conveyance itself, but engaging on its own behalf in the business of transporting goods through the agency and over the lines of other carriers of its own selection and employment, is a common carrier. This has been held the proper view as to express companies, dispatch companies, and fast freight lines. As elsewhere shown express companies, fast freight lines and the like are common carriers in all that the term implies. They can not contract for exemption from their own negligence nor for exemption from the negligence of the railroad companies from which their rights are derived. The courts take judicial knowledge of the course of business, and will not permit the rules governing carriers to be evaded by the formation of such companies and their intervention between the railroad company and the shipper. Neither the name adopted nor any mere matters of form can change the rule applicable to them since the courts give heed to the matters of substance rather than form.”

At the foot of this section are citations covering almost a full page.

Respectfully submitted,

WILLIAM G. WHEELER,

Attorney for Plaintiff in Error.

EDWARD M. HYZER,

Of Counsel.

FILED
APR 16 1924
WM. R. STANS
CL

No. 288

In the Supreme Court of the United States

OCTOBER TERM, 1923

THE UNITED STATES EX REL. CHICAGO, NEW YORK
& BOSTON REFRIGERATOR COMPANY, PLAINTIFF
IN ERROR,

v.

INTERSTATE COMMERCE COMMISSION, DEFENDANT IN
ERROR

FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA ON WRIT OF ERROR

BRIEF FOR INTERSTATE COMMERCE COMMISSION

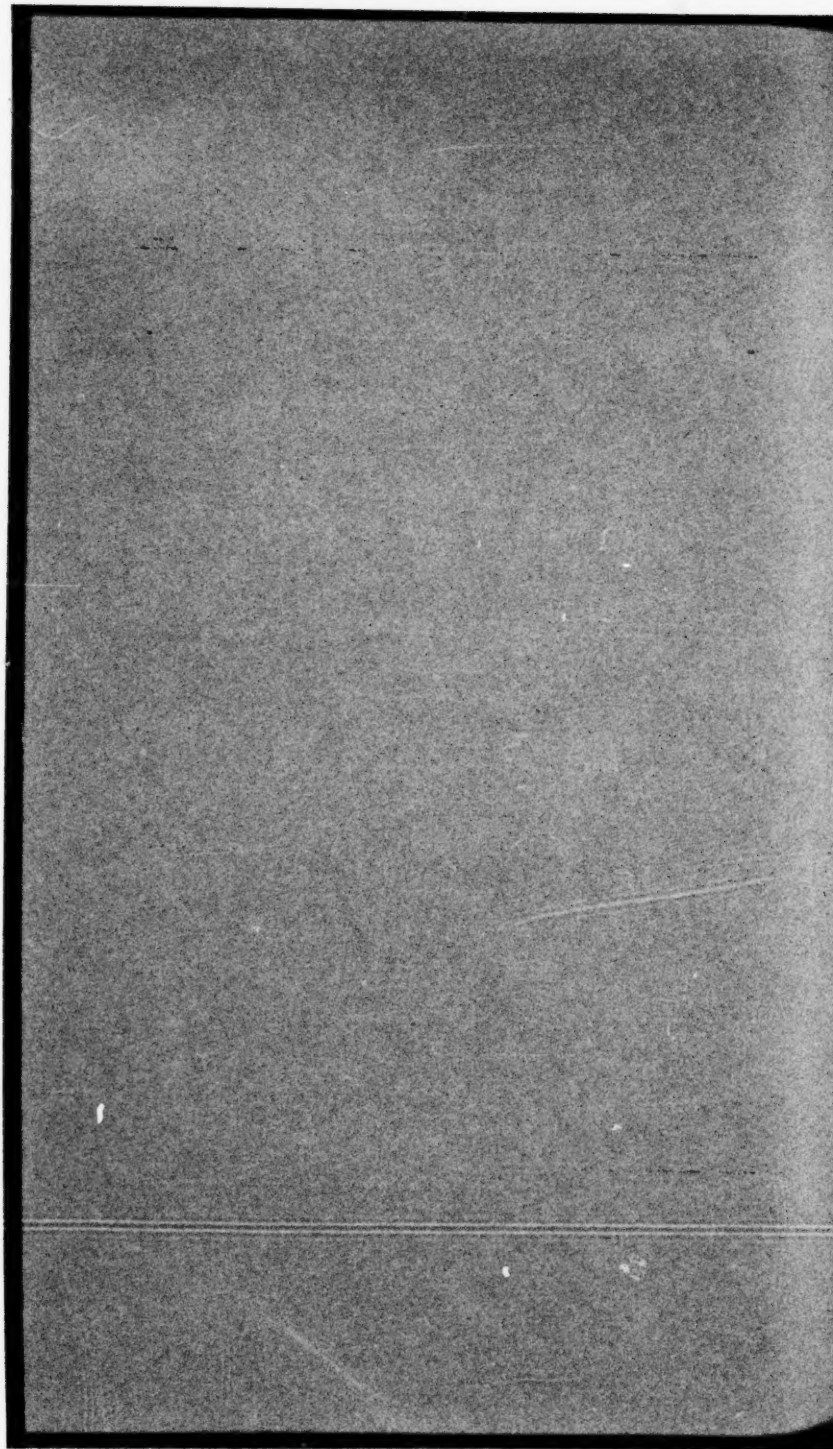
J. CARTER FORT,

For Interstate Commerce Commission.

P. J. FARRELL.

Of Counsel.

APRIL, 1924.



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In the Supreme Court of the United States

OCTOBER TERM, 1923

THE UNITED STATES, EX REL. CHICAGO, New York & Boston Refrigerator Com- pany, Plaintiff in Error	} No. 288
v.	
INTERSTATE COMMERCE COMMISSION, DE- fendant in Error	

*FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA ON WRIT OF ERROR*

BRIEF FOR INTERSTATE COMMERCE COMMISSION

STATEMENT OF THE CASE

PROVISIONS OF THE STATUTE

There is only one question in this case: Is the Chicago, New York & Boston Refrigerator Company a "carrier" within the meaning of that word as used in section 209 of the Transportation Act, 1920 (41 Stat. L. 464)? This section provides for a guaranty by the United States to certain carriers in respect of their railway operating incomes for the period of six months following the termination of Federal control, and provides that the Interstate Commerce Commis-

sion shall ascertain the amount of money necessary to make good the guaranty to each such carrier and certify this amount to the Secretary of the Treasury.

Section 209 is set out in full as Appendix A hereto. The language in which we are more directly interested reads as follows:

SEC. 209. (a) When used in this section—

The term "carrier" means (1) a carrier by railroad or partly by railroad and partly by water whose railroad or system of transportation is under Federal control at the time Federal control terminates, or which has heretofore engaged as a common carrier in general transportation and competed for traffic or connected with a railroad at any time under Federal control; and (2) a sleeping-car company whose system of transportation is under Federal control at the time Federal control terminates; but does not include a street or interurban electric railway not under Federal control at the time Federal control terminates which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic or sale of power, heat and light, or both;

The term "guaranty period" means the six months beginning March 1, 1920.

The term "test period" means the three years ending June 30, 1917; and

The term "railway operating income" and other references to accounts of carriers by railroad shall, in the case of a sleeping-car company, be construed as indicating the

appropriate corresponding accounts in the accounting system prescribed by the Commission.

(b) This section shall not be applicable to any carrier which does not on or before March 15, 1920, file with the Commission a written statement that it accepts all the provisions of this section.

(c) The United States hereby guarantees—

(1) With respect to any carrier with which a contract (exclusive of so-called cooperative contracts or waivers) has been made fixing the amount of just compensation under the Federal Control Act, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than one-half the amount named in such contract as annual compensation.

* * * * *

(g) The Commission shall, as soon as practicable after the expiration of the guaranty period, ascertain and certify to the Secretary of the Treasury the several amounts necessary to make good the foregoing guaranty to each carrier. The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of each such carrier upon the Treasury of the United States, for the amount shown in such certificate as necessary to make good such guaranty. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated.

PROCEEDINGS BEFORE THE COMMISSION AND IN THE
COURTS BELOW

We shall hereafter refer to the Interstate Commerce Commission as the "Commission," the Chicago, New York & Boston Refrigerator Company as the "car company," and the period of six months following the termination of Federal control as the "guaranty period."

On May 10, 1921, the car company applied to the Commission for a certification under section 209 covering a partial payment of the money to which it claimed to be entitled. After appropriate proceedings, the Commission issued a report (Rec. p. 11) in which it refused to make the certification on the ground that the car company was not embraced in the word "carrier" as defined and used in the guaranty provision. Subsequently the car company applied to the Commission for a certification covering final payment of the full amount claimed and the Commission issued another report (Rec. p. 22) denying the application on the same ground as that upon which it had denied the application relating to partial payment.

On February 28, 1922, the car company filed a petition in the Supreme Court of the District of Columbia for a writ of mandamus directing the Commission to (Rec. pp. 2, 5)—

ascertain and certify to the Secretary of the Treasury of the United States the amounts necessary to make good the guaranty to relator contained in section 209 of the Transportation Act, 1920.

A rule to show cause was issued and the Commission responded by an answer (Rec. p. 23) the allegations of which were traversed by the car company. (Rec. p. 29.) It is not necessary to review the pleadings; they contain no admissions pertinent to the question now before the court. The case was tried in the Supreme Court of the District of Columbia, without a jury, on July 10 and 11, 1922. Considerable evidence was introduced, a narrative statement of which is included in the record. On July 31, 1922, the court gave judgment for the Commission, discharged the rule to show cause, and dismissed the petition. (Rec. p. 31.) The court issued a memorandum opinion, in which it said that the Commission had properly disposed of the car company's application. (Rec. p. 29.)

The car company appealed to the Court of Appeals of the District of Columbia and that court affirmed the judgment of the lower court. (Rec. pp. 123-128.)

**QUESTION PRESENTED AND BRIEF STATEMENT OF
OPPOSING CONTENTIONS**

The question is whether or not the car company is a "carrier" within the meaning of section 209. The word "carrier" is specifically defined in this section as meaning:

- (1) a carrier by railroad, or partly by railroad and partly by water * * * and; (2) a sleeping-car company * * *.

There is, of course, no claim that the car company is a carrier "partly by railroad and partly by water" or that it is a "sleeping-car company." The question,

therefore, narrows to this: Is the car company a "carrier by railroad"? If not, the Commission has no duties under section 209 in respect of this company.

A brief statement of the opposing contentions will tend to make the significance of the facts, herein-after set forth, more readily understandable.

Speaking generally, the contention of the car company, as we understand it, is that this company is a common carrier because of the character of the business in which it is engaged; and that, if it is a carrier at all, it is a carrier by railroad because the shipments, in connection with which it claims the status of a common carrier, move by railroad.

On the other hand, we contend:

First. That the term "carrier by railroad," as used in section 209, means a railroad company operating as a carrier and, therefore, does not include the car company, which admittedly is not a railroad company, and would not include this company even if it were a common carrier, such as it claims to be.

Second. That, if the term "carrier by railroad" were not restricted in its meaning to railroad companies, but included also other common carriers, nevertheless, it would not embrace the car company because that company is not a carrier of any kind.

**STATEMENT OF FACTS RELATIVE TO THE BUSINESS OF
THE CAR COMPANY**

It seems desirable to state the facts here because the statement in the brief for plaintiff in error is inadequate in respects which we think important.

The car company is a corporation organized under the laws of the State of Maine. It was not incorporated as a common carrier. The purposes of the company, as set out in its articles of incorporation, are as follows (Rec. p. 80):

The purposes of said corporation are to manufacture, build, repair, buy, own or hire, lease, sell, or rent for hire cars of all descriptions, both freight and passenger, engines and other rolling stock used and employed in the operation of railroads; to manufacture and deal in any articles fabricated of wood, iron, or other metals; to purchase, lease, or otherwise acquire, use and sell and otherwise dispose of any and all patents, patent rights, processes, and inventions, and interests therein and rights thereunder, as may be deemed essential or convenient in carrying on the business of the corporation, with power to authorize and license other persons or corporations to manufacture, sell, use, enjoy, and operate thereunder; to purchase, lease, and otherwise acquire, manage, use, deal in and sell and otherwise dispose of any and all real and personal estate and plant and other property and things whatsoever, including stocks, bonds, and other securities of similar corporations, deemed necessary or convenient for the prosecution of and in carrying on the business of the corporation, and in doing any and all acts and things incidental to or connected with said business; and to have and to exercise all the rights, powers, and privileges appertaining to corporations under the general laws of the State of Maine.

The capital stock of the company is owned by the Grand Trunk Railway Company of Canada. Prior to Federal control, when its cars were taken over by the Government, the car company owned and controlled some thirteen hundred refrigerator cars; it did not own or control any motive power, roadbed, tracks, unloading stations, or other railroad property or facilities, except its cars mentioned above. (Rec. pp. 58, 81.) These cars were used by certain railroad companies for the transportation of dairy products from the West to the East. Chicago and points west thereof were the principal points of origin; New York, Boston, and Philadelphia the principal points of destination. The car company repaired its cars and kept them ready for use by the railroads. It received car rental or "mileage" at the rate of 2 cents a mile from all railroad companies over whose lines its cars moved

as compensation for the use of the cars by the railroad companies.

The quotation is from the testimony of Mr. Charles R. Cooper, president and general manager of the car company. (Rec. p. 81.) The mileage is described in the contract between the car company and the Grand Trunk as being "for hire of refrigerator cars." (Rec. p. 42, Plt. Ex. 2, 12th paragraph.)

In addition to the car rental, or so-called mileage, the car company obtained revenue from another source. It had contracts with certain railroad companies east of Chicago, viz, the Grand Trunk Railway Company of Canada and its subsidiaries, the

Central of Vermont, the Boston & Maine, the Lehigh Valley, and the Delaware, Lackawanna & Western, by the terms of which these railroad companies made certain payments to the car company in connection with shipments moving over their lines in its cars. (Rec. pp. 39-55.) The payments are described in the contracts as "commissions." The Boston & Maine and the Delaware & Hudson paid commissions only on traffic destined to competitive points. (Rec. pp. 45, 55.) These commissions were measured by a percentage of the freight revenue accruing to each of the contracting railroad companies which transported the shipments in the cars of the car company, and amounted to some $12\frac{1}{2}$ per cent of such revenue. Mr. Cooper, president of the car company, testified (Rec. p. 81) that the "commissions" were paid to the car company by the railroads

as compensation for soliciting freight,
and that (Rec. p. 82):

When I spoke of a division of revenue between petitioner and railroad companies on direct examination I meant the commission which we receive for soliciting freight.

The contract between the car company and the Grand Trunk and its subsidiaries provided (Rec. p. 43):

In consideration of "the railways" entering into this agreement "the car company" covenants and agrees to at all times efficiently maintain at its own expense all necessary and proper agencies, staff and offices, and to use its best endeavor to obtain by solicitation, for

transportation over the lines of "the railways," all refrigerator traffic possible.

This was the contract which was in effect from 1907 until Federal control. In the brief for plaintiff in error the contract, dated September 16, 1897 (Rec. pp. 34-39), which preceded this one, is reviewed in some detail on pages 3, 4, 5, and 6, and quoted from on pages 41 and 42. Counsel say that the new contract was "similar in its general effect" to the one which it superseded. In our view the language of the two contracts is sufficiently different to make it advisable to refer to the new one in any consideration of the contractual relations of the car company and the railways.

The car company had no contracts with the railroads west of Chicago which transported shipments solicited by it and moved in its cars. Furthermore, some of the shipments in its cars were delivered in the East by railroad companies with which it had no contracts. The only compensation received by the car company from these noncontracting railroads was the car rental or mileage referred to above. (Rec. p. 81.)

The car company maintained agents in various producing centers in the West as well as at certain consuming points in the East to solicit shipments of refrigerator traffic. Shipments were also solicited by means of circulars. East of Chicago the cars moved over established routes made up of the contracting railroads; that is, the railroads which paid commissions to the car company. The terms "National

Despatch" and "New York Despatch" are trade names of the car company, and the president of the car company testified that these names

indicate, in the minds of the shippers, routing east of Chicago, via the Grand Trunk and the other railroads which have contracts with

the car company. (Rec. p. 82.)

No employee of the car company accompanied its cars (Rec. p. 92). As to control of the cars, the contracts with the Grand Trunk and its subsidiaries provided as follows (Rec. p. 40):

Third. It is agreed that the said cars are not in the West to be loaded eastbound with local traffic of "the railways" nor in any way diverted from the established through routes without the consent of "the car company," nor are they to be loaded with any freight that will tend to injure or cause them to be rendered unfit for the carriage of refrigerator traffic.

Fourth. "The railways" agree that all loaded refrigerator cars operated in this service by "the car company" shall, at destination points on their lines, be promptly unloaded and forwarded either loaded or empty to such points as may be directed by "the car company" for the purpose of securing refrigerator traffic for carriage under this agreement.

In the event, however, of "the car company" not procuring sufficient westbound refrigerator traffic "the railways" shall have the right to load the said cars with any class of traffic that will not damage them for the car-

riage of dairy products, provided such traffic is destined to points on or beyond the direct lines west, but east of the Missouri River.

Fifth. The cars shall be under the control of "the railways" while on their respective lines, but the directions of "the car company" as to their distribution at, and west of Chicago, shall be promptly observed. The rules of the Master Car Builders' Association shall govern all questions affecting condition, loss, damage, and repairs to cars.

The railroad companies made out, in their own names, bills of lading covering 80 or 90 per cent of the shipments moving in the car company's cars in connection with which bills of lading were issued. As to some shipments, originating in the West and re-consigned or rebilled at Chicago, about 10 per cent of all shipments in its cars, the car company issued bills of lading on its own form at Chicago covering the movements east of that city. These bills of lading issued by the car company had printed on their faces the following language:

Received, subject to the classifications and tariffs in effect on the date of issue of this original bill of lading.

which referred to the tariffs of the railroad companies. (Rec. pp. 56, 81; Plt. Ex. 9, opposite p. 56.) It was testified that (Rec. p. 56):

Some traffic moves without bill of lading. The shipper gets a receipt and he is satisfied. I should say that 50 per cent moves this way. The receipts issued at Chicago are on our [the car company's] form.

No copy of such a receipt was introduced in evidence, and it does not appear whether or not these receipts, like the bills of lading issued by the car company, made reference to the tariff rates and classifications, or otherwise referred to the railroad companies.

Waybills covering shipments in the car company's cars were made out by the railroad companies and were records of those companies. Copies were furnished to the car company for its information (Rec. p. 92). At times the car company collected prepaid freight charges on shipments moving from Chicago in its cars, but turned over the entire amount of such collections to the railroad companies (Rec. p. 81). At times it extended credit to shippers in respect to such charges. This was done when authorized by the Chicago treasurer of the Grand Trunk Railroad (Rec. p. 82). The car company also investigated and settled loss and damage claims in connection with shipments moving in its cars and was reimbursed for the entire amount of such settlements by the railroad companies (Rec. pp. 83, 84). The contract with the Grand Trunk and its subsidiaries provided (Rec. p. 43):

Nineteenth. "The railways" each agree to be individually responsible as common carriers and pay for all damage to or loss of freight while upon their respective roads, and if damage or loss shall occur which can not be located, they each agree to pay their proportion based upon the rules of the Freight Claim Association.

and also provided in paragraph "Eighteenth" that the car company agreed (Rec. p. 43):

to voucher and settle all claims in respect of traffic carried under this agreement which have been authorized by "the railways."

The car company kept itself informed of the location of its cars by means of reports from agents of the transporting railroad companies and, upon request, furnished the shippers with information concerning the movement of shipments. Also, when occasion arose, it ascertained, by inquiry of the railroad companies, whether the shipper's instructions regarding routing, icing, diversion, etc., had been followed.

Upon shipments moving in cars of the car company the shippers paid freight charges to the railroad companies in accordance with the rates published, and filed with the Commission, by the railroad companies which transported such shipments. The car company received no payment or compensation of any kind from the shippers. The rates published and collected by the railroad companies covered all services of transportation which were performed. (Rec. pp. 81, 92.)

The car company has never filed tariffs or rates with the Commission, which common carriers by railroad engaged in interstate commerce are required to file by section 6 of the Interstate Commerce Act. Neither has it made annual reports to the Commission, which common carriers by railroad engaged in interstate commerce are required to make

by section 20 of the Interstate Commerce Act. The accounts of the car company have never been kept in the manner which the Commission has prescribed for carriers. (Rec. p. 81.)

On June 1, 1918, the cars of the car company were taken under Federal control and from that time until March 1, 1920, the end of the Federal control period, the cars were used by the Government. The car company was compensated by the United States for such use. (Rec. pp. 59, 79.)

At the expiration of Federal control the cars of the car company were returned to it and again put into the same service as before Federal control and by the same railroads. During the guaranty period the car company received the customary mileage or car rental for the use of its cars, but received no commissions from the railroad companies for soliciting business, and did very little if any soliciting. It was testified that the car company attempted to renew its commission arrangements with the Grand Trunk Railway Company of Canada, but this company, which owns all of the stock of the car company, refused to make such arrangements until after the expiration of the guaranty period, as did the other railroad companies which had commission contracts prior to Federal control. (Rec. pp. 79, 82, 92.)

The facts may be summarized as follows: The car company is not incorporated as a carrier; does not own, control, or use the necessary facilities for

performing carriage; does not hold itself out to perform carriage by naming or publishing rates applicable thereto; does not, in fact, perform carriage or receive any compensation from the shippers whose shipments move in its cars. Even the cars owned by the car company, while moving over the lines of the various railroad companies, are for the time being cars of the railroad companies, and these companies pay rental to the car company for the use of such cars. The services of the car company are of two kinds. First, it rents cars to the railroad companies, and second, it solicits business for certain railroad companies with which it has contracts, as agent for those railroads, and is paid for this service by the railroads. In connection with this solicitation of freight the car company performs certain incidental services, as agent for the railroads, which are calculated to promote such solicitation.

The Court of Appeals stated the facts in its opinion substantially as we have stated them. (Rec. pp. 125, 126.)

ARGUMENT

I. THE TERM "CARRIER BY RAILROAD" IN SECTION 209 MEANS A RAILROAD COMPANY OPERATING AS A CARRIER

—

This meaning is in accord with the ordinary acceptance of the words

Even if the car company could properly be considered a common carrier, and we will show later that it can not, it would, nevertheless, not be a

"carrier by railroad" within the meaning of section 209.

The term "carrier by railroad" has an established and well-understood meaning. It means a railroad company operating as a carrier. This is the ordinary acceptance of the words. In *Wells, Fargo & Co. v. Taylor*, 254 U. S. 175, the court in considering the meaning of the term "carrier by railroad," as used in the Employers' Liability Act, 36 Stat., L. 291, stated, at pages 187, 188:

In our opinion the words "common carrier by railroad," as used in the act, mean one who operates a railroad as a means of carrying for the public—that is to say, a railroad company acting as a common carrier. This view not only *is in accord with the ordinary acceptance of the words*, but is enforced by the mention of cars, engines, track, roadbed, and other property pertaining to a going railroad (see *Southern Pacific Co. v. Jensen*, 244 U. S. 205, 212-213); by the obvious reference in the latter part of sections 3 and 4 to statutes requiring engines and cars to be equipped with automatic couplers, standard drawbars, and other appliances intended to promote the safety of railroad employees (see *San Antonio & Aransas Pass Ry. Co. v. Wagner*, 241 U. S. 476, 484); by the use of similar words in closely related acts which apply only to carriers operating railroads, c. 196, 27 Stat. 531; c. 225, 35 Stat. 476; c. 208, 36 Stat. 350, and by the fact that similar words in the original Interstate Commerce Act

had been construed as including carriers operating railroads but not express companies doing business as here shown. 1 I. C. C. 349; *United States v. Morsman*, 42 Fed. Rep. 448; *Southern Indiana Express Co. v. United States Express Co.*, 88 Fed. Rep. 659, 662; s. c. 92 Fed. Rep. 1022. And see *American Express Co. v. United States*, 212 U. S. 522, 531, 534; (Italics ours.)

There was a like holding in *Higgins v. Erie R. R.*, 89 N. J. L. 629, and in *State ex rel. Great Northern Express Co. v. District Court*, 142 Minn. 410. Both of these cases are cited with approval by the Supreme Court in the *Wells Fargo case*, *supra*.

An express company is a common carrier, but it is not a "carrier by railroad" simply because it is not a railroad company operating as a carrier. There is no claim that the car company is a railroad company, and it is, therefore, not a "carrier by railroad."

There are many plain indications in section 209 that the term "carrier by railroad," as used therein, was intended to mean a railroad company and was not intended to include companies like the car company

We have seen that the words "carrier by railroad" have a well-established meaning which does not include the car company.

The presumption that these words were used in section 209 in their natural and obvious sense to mean a railroad company operating as a carrier is confirmed by the following unmistakable indications found in the language of that section:

One. Sleeping-car companies and the American Railway Express Company are dealt with in section 209 in a manner which makes it clear that Congress used the expression "carrier by railroad" in a sense which would not embrace these companies. How can it be said, then, that the expression embraces the car company?

"Carrier" is defined as meaning "(1) a carrier by railroad * * * ; and, (2) a sleeping-car company * * * ". This shows that a sleeping-car company is not a "carrier by railroad" within the meaning of the statute. Counsel say that a sleeping-car company is not ordinarily considered to be a common carrier and, therefore, it was necessary to name such companies in order to bring them within the guaranty provision. But a sleeping-car company is declared to be a common carrier by the Interstate Commerce Act, section 1 (3), and can be regarded as a common carrier by railroad with less difficulty than the car company can be so regarded.

In the paragraphs of section 209 preceding paragraph (i), "carriers" are treated. The express company is not excepted from the provisions of these paragraphs, or referred to in any way. After completely covering the subject of a guaranty to "carriers," section 209, in paragraph (i), then provides a guaranty for the express company. The significance of the structure and arrangement of the section, as showing that the express company was not intended to be included within the meaning of the term "carrier by railroad," is evident from a reading of the

section and is not to be explained away by the fact that the guaranty to the express company was different from that made to "carriers." In fact, the same guaranty was not made to all carriers. See paragraph (c) (1), (2), (3) and (4).

Attention is called to the fact that in section 300 of the Transportation Act, relating to disputes between carriers and their employees, the following language is used:

(1) The term "carrier" includes any express company, sleeping-car company, and any carrier by railroad, subject to the Interstate Commerce Act * * *.

This can be explained only as showing that Congress did not consider that a sleeping-car company or an express company was a "carrier by railroad" as the words were used in that section.

Two. The guaranty provided in section 209 is in respect to "railway operating income." The refrigerator company has no "railway operating income." Only a railroad company has a "railway operating income." This is a term taken from the system of accounts prescribed by the Commission for railroad companies. Congress recognized that only a railroad company has a "railway operating income" and, therefore, made special provision for sleeping-car companies in the last paragraph of section 209 (a), which reads as follows:

The term "railway operating income" and other references to accounts of carriers by railroad shall, in the case of the sleeping-car

company, be construed as indicating the appropriate corresponding accounts in the accounting system prescribed by the Commission.

No similar provision is made for determining in the case of the car company, or of car line companies generally, an item corresponding to the "railway operating income" of a railroad company.

It is also to be observed that, in connection with the guaranty to the American Railway Express Company, the term "operating income" is used and not "railway operating income." (Section 209 (i).)

Three. There are references in section 209 to changes in the length of line (f) (2), and to maintenance of way and structures (f) (3) and (f) (5), which indicate that the Congress had in mind railroad companies.

Plaintiff in error lays great stress on the phrase "or system of transportation" used in section 209. The language in which this phrase appears will be repeated for convenience:

The term "carrier" means (1) a carrier by railroad, or partly by railroad and partly by water, whose railroad or system of transportation is under Federal control at the time Federal control terminates * * *.

Counsel say, on pages 20 and 21 of their brief:

Doubtless the conclusion of the Commission would have been right if section 209 (a) read: "The term 'carrier' means (1) a carrier by railroad, or partly by railroad and partly by water, *whose railroad* is under Federal control at the time Federal control term-

inates," without including the words "*or system of transportation*," but the introduction of the disjunctive phrase "or system of transportation" makes impossible a construction which confines section 209 to railroad companies operating as carriers.

The statute applies to a carrier by railroad or "partly by railroad and partly by water." The expression "or system of transportation" is added to the language "whose railroad" for the obvious purpose of including the facilities for water transportation owned or controlled by a carrier "partly by railroad and partly by water."

Furthermore, as the Court of Appeals pointed out, the statute does not provide for a guaranty to owners of "systems of transportation" but only to "carriers by railroad or partly by railroad and partly by water." We quote from the opinion of the court (Rec. p. 128):

Emphasis is laid by the refrigerator company upon the phrase "whose railroad or system of transportation is under Federal control at the time Federal control terminates," which occurs in subdivision (a) of section 209. They argue that it owned a system of transportation at the time mentioned. We do not think so. But however that may be, this phrase can not be considered apart from the words which preceded in the same sentence. The organization entitled to the guaranty must be a carrier by railroad or partly by railroad and partly by water. If it is not, the fact that it may be a system of

transportation would not bring it within the purview of the guaranty.

On pages 22 *et seq.* of the brief for the plaintiff in error attention is called to the contract between the car company and the Director General providing for compensation to the car company for the use of its property by the Government during the period of Federal control. It is pointed out that the contract referred to the property of the car line as a "system of transportation," and counsel state that the Director General,

in dealing with this refrigerator company, understood the real situation because, in making a contract under the Federal Control Act with this company, he used the standard form of railroad contract, modified to suit the situation of the refrigerator company as a carrier by railroad, whose "system of transportation" had been taken over. In other words, he used the disjunctive phrase as indicating a carrier by railroad which did not operate the railroad. He recognized the refrigerator company as an owner of a "system of transportation."

The Director General, in making this contract, did not, and had no occasion to, construe the "disjunctive phrase" "or system of transportation" as used in section 209. The contract did not involve a construction or consideration of section 209, or of language in any other statute similar to the language of section 209. The phraseology used in the contract has no bearing upon any question before the court.

**II. THE CAR COMPANY IS NOT A CARRIER OF ANY KIND;
IT WOULD NOT BE ENTITLED TO A GUARANTY UNDER
ANY POSSIBLE CONSTRUCTION OF SECTION 209**

We think that "carrier by railroad," as used in section 209, means a railroad company, operating as a carrier, and that this is established both by the ordinary meaning of the words and by the context. But we will go further and show that the car company is not a carrier at all and would not fall within the provisions of section 209, under any possible construction of the term "carrier by railroad."

In support of the contention that the car company is a common carrier, counsel cites *Cownie Glove Co. v. Merchants Despatch Co.*, 106 N. W. 749; *Bank of Kentucky v. Adams Express Co.*, 3 Otto 174; *American Express Co. v. Ogles*, 81 S. W. 1023; *Kettenhofer v. Globe Transfer and Storage Co.*, 127 Pac. 295; *Merchants Despatch Co. v. Bloch*, 86 Tenn. 392.

These cases merely hold that an express company, and companies doing a like business, have a common carrier liability. But the differences between the business of an express company and that of the car company are many, obvious, and essential.

An express company holds itself out to the public to carry by publishing rates; it receives its compensation from the shipper; it has custody of the shipment during transit, and its employees accompany the shipment; it hires the railroad companies to move the shipment for it, and pays the railroads for such service. As to express transportation, the railroad

company publishes no rates, collects no charges from the shippers, is not responsible to the shipper for the care of the shipment, and looks to the express company for its compensation.

The situation in respect to shipments solicited by the car company and moving in its cars is exactly the opposite. This company does not undertake to carry for the shipper under rates it has established; does not collect its compensation from the shipper, or hire the railroad companies to perform the transportation as its agents. In fact, the railroad companies hold themselves out to transport such shipments by publishing rates applicable thereto, which they collect from the shippers; they furnish all means and facilities for transportation, including cars for which they pay rental; they are responsible for the shipment and pay loss and damage claims to the shippers. Without question, the railroad company is a common carrier as to such shipments. It merely rents the cars of the car company and hires that company to solicit business for it.

If rebates were paid from the rates published by the railroad companies, in respect to shipments as to which the car company claims to be a common carrier, can there be any doubt that the railroad companies would be guilty of violating the law forbidding rebating by carriers subject to the Interstate Commerce Act? The relationship of principal and agent between the railroad companies and the car company seems to be beyond dispute. The shipper knows that the car company deals with him

as agent for the railroads because he knows that he must pay the rates published by the railroad companies.

When the car company distributed circulars to shippers showing a statement of rates, the rates so shown were the rates of the railroad companies and this was apparent from the faces of the circulars. Plaintiff's Exhibit 43, immediately preceding page 89 of the record, is such a circular and shows rates from Chicago and Mississippi River points to certain eastern destinations. This circular was headed:

Memorandum of rates as published by
initial lines in effect from and to points named
below.

and contained the following language:

Proportional rates in cents per 100 pounds
from Mississippi River points covered by
western roads' tariffs. (Italics ours.)

The agency of the car company should have been, and seems to have been, a matter of common knowledge to shippers. The president of the car company testified (Rec. p. 82):

The trade names "National Despatch" and "New York Despatch" indicate, in the minds of the shippers, routing east of Chicago, via the Grand Trunk and the other railroads which have contracts with petitioners.

Since the car company in its dealings with shippers acted as agent for the railroad companies, the fact, if it is a fact, that the car company failed in some instances to disclose this agency to shippers, and

incurred a certain liability to the shippers as the result of such failure, would have no bearing on any point in our case. But it should be remembered that, although the car company had been operating some twenty years prior to Federal control, no case is cited holding it liable as a common carrier; and, although it appeared that thousands of claims had been filed for loss of, and damage to, shipments which moved in the cars of the car company, in no case did this company pay the claims on its own account or participate in any part of such payment. (Rec. pp. 83, 84.)

The car company received no division of freight revenue in the sense that carriers participating in joint rates receive divisions of freight revenue. The payments it received were merely commissions for soliciting business. This is clearly shown by the contracts and the testimony. The fact that some roads over which its cars moved did not pay any commissions, and others paid them only on competitive business, would alone be sufficient to indicate the character of the payments.

The fact that the car company owns railroad cars and rents them to railroad companies does not have the effect of making it a common carrier. In *Pullman Co. v. Linke*, 203 Fed. 1017, it was held that a sleeping-car company was not a common carrier, the court saying at page 1019:

A sleeping-car company, it is true, by furnishing sleeping cars under a contract with a railroad company to be used by the traveling

public, does not thereby assume or acquire the status of a common carrier of goods or passengers (*Lemon v. Palace Car Co.* [C. C.] 52 Fed. 262; Elliott, Railroads, sec. 1616; Beale, Innkeepers & Hotels, sec. 342; Hutchison, Carriers, sec. 1130; 25 Am. & Eng. Ency. Law, 1110, 1111), unless declared to be such by some constitutional or statutory provisions. It merely furnishes accommodations to the passengers of another company and performs only an auxiliary function in their transportation; but it is nevertheless engaged in a public calling. 6 Cyc. 656; Elliott, Railroads, sec. 1618.

In *Ellis v. Int. Com. Comm.*, 237 U. S. 434, it was held that the Armour Car Lines was not a common carrier, the court saying at pages 443, 444:

The Armour Car Lines is a New Jersey corporation that owns, manufactures, and maintains refrigerator, tank, and box cars, and that lets these cars to the railroad or to shippers. It also owns and operates icing stations on various lines of railway, and from these ices and re-ices the cars, when set by the railroads at the icing plant, by filling the bunkers from the top, after which the railroads remove the cars. The railroads pay a certain rate per ton, and charge the shipper according to tariffs on file with the Commission. Finally it furnishes cars for the shipment of perishable fruits, etc., and keeps them iced, the railroads paying for the same. *It has no control over motive power or over the movement of the cars that it furnishes as above,*

and in short, notwithstanding some argument to the contrary, is not a common carrier subject to the act. It is true that the definition of transportation in section 1 of the act includes such instrumentalities as the Armour Car Lines lets to the railroads. But the definition is a preliminary to a requirement that the carriers shall furnish them upon reasonable request, not that the owners and builders shall be regarded as carriers, contrary to the truth. *The control of the Commission over private cars, etc., is to be affected by its control over the railroads that are subject to the act.* The railroads may be made answerable for what they hire from the Armour Car Lines, if they would not be otherwise, but that does not affect the nature of the Armour Car Lines itself. (Italics ours.)

It will be observed that the Armour Car Lines not only rented cars to railroad companies but performed transportation services in icing the cars and was paid by the railroad companies.

In the Matter of Private Cars, 50 I. C. C. 652, and in *Perishable Freight Investigation*, 56 I. C. C. 449, the Commission regarded the car company and other companies engaged in a like business as private car lines and not as common carriers.

It should not be overlooked that, until this case arose, the car company had never regarded itself as a common carrier. It was not incorporated as a carrier and it has never filed tariffs or annual reports with the Commission, which the law would require it to do if it were a common carrier.

At this point we wish to call attention to the fact that during the guaranty period the car company was engaged only in renting cars and paid only for this service. Unless this activity is sufficient to give it the status of common carrier, and no such contention is or could be made, it was not operating as a common carrier during this time. Beyond doubt the guaranty applies only to carriers by railroad which were operating during the guaranty period. The guaranty is in respect of "*railway operating income.*"

In discussing the failure of the car company to solicit business or receive commissions during the guaranty period, it is said in the brief for plaintiff in error, at pages 51 and 52:

If the contracts had been renewed on March 1, 1920, the additional amounts paid by the railroad companies would have been properly charged, and would have operated to increase the amount due to them under the guaranty. So this fact can make no difference in the amount that the Government would be compelled to pay. The railroad companies withheld revenue from the refrigerator company. Consequently, the amount paid by the Government to them was less. Payment to the refrigerator company under the guaranty will merely bring the situation back to where it would have been had the contracts been renewed at the time private control was resumed. This is the situation with which we are concerned. The Transportation Act and the guaranty section speak

as of March 1, 1920, and situations that arise after that date are of no use in construing the law.

The point which counsel suggest is without merit. It assumes that the railway companies were compelled by law to accept the guaranty provisions and that, as a result, an increase in the operating expenses of these companies, due to the payment of commissions to the car company, necessarily would have increased the amount which the Government would have been called upon to pay the railroads under the guaranty provision. But the railroad companies were not compelled to accept the guaranty. In fact the Grand Trunk Railway Company of Canada did not accept the provisions of section 209 in regard to the operation of its Canadian lines. If these lines had paid commissions to the car company during the guaranty period, the result would not have been to increase the Government's guaranty payments. The Grand Trunk Railway Company of Canada owns all the capital stock of the car company, and ordinarily this company, "for transportation over its Canadian lines," "paid about 50 per cent of the total commission" (Rec., p. 81) and about 25 per cent of the entire revenue received by the car company. The Grand Trunk Railway Company of Canada refused to make the commission payments during the guaranty period.

The contention of counsel is unsound for another reason. Even in the case of a railway company which did accept the guaranty, only legitimate ex-

penditures for services actually rendered for it could have been considered as operating expenses for the purpose of affecting the obligations or rights of the Government under the guaranty provision. During the guaranty period the car company solicited very little, if any, business. Mr. Cooper testified (Rec. p. 82):

During the guaranty period we did not receive any commissions from any railroads; our staff had been largely disbanded and was not reorganized until October, 1920. We did not solicit much business; we made no effort comparable to our ordinary effort to solicit freight.

On page 30 of the brief for plaintiff in error reference is made to Exhibit 45, which is an order of the Commission under paragraph 12 of section 20a of the Interstate Commerce Act. This paragraph deals with interlocking officers and directors of common carriers and provides that no person shall be an officer or director of more than one carrier unless authorized by the Commission.

The Grand Trunk Railway Company of Canada asked the Commission to authorize certain persons to hold official positions with two or more companies including the car company. The Commission granted the requested authority, in so far as it related to holding office with the car company, and did not point out, as it did in the case of some other companies involved in the application, that such authority was unnecessary because the car company was

not a carrier. This was a mere inadvertence which produced no different result from that which would have followed a statement that the requested authorization was not required by law. The oversight was remedied in a supplemental order, dated July 22, 1922, expressly holding that the car company was not a carrier within the meaning of section 20a (12). A copy of the supplemental order is attached hereto as "Appendix B."

III. THE GENERAL PURPOSE OF THE GUARANTY PROVISION CONFIRMS THE VIEW THAT "CARRIER BY RAILROAD" DOES NOT INCLUDE THE CAR COMPANY

At the termination of Federal control, rates were too low; they had not been adjusted to meet conditions then existing. The rates of railroad companies, express companies, and sleeping-car companies, to which the guaranty applies, were subject to control by the Commission and by State authorities and could be increased only when, and to the extent that, these authorities permitted them to be increased. The manifest purpose of the guaranty provision was to guarantee these companies a fair income, in order that they might serve the public, for a sufficient period to enable the governmental authorities to make the necessary investigations and readjust the rates to meet the prevailing conditions. With this purpose in mind it is not difficult to understand why Congress did not see fit to extend the guaranty to companies like the car company whose charges were not subject to regulation and were not held down temporarily to

an unduly low level pending action by governmental agencies.

Section 209 was not designed to compensate companies for the use of their properties by the Government during Federal control. Ample provision for such compensation was made elsewhere. Therefore, it does not follow that a company is entitled to a guaranty simply because its properties were taken under Federal control. Section 209, by its terms, applies to railroad companies whose properties were not under Federal control, and furthermore, it does not apply, by any possible construction, to all companies whose properties were under Federal control; for example, to boat lines not owned by railroad companies.

Even if, contrary to the fact, the Congress had excluded such companies as the refrigerator company from the guaranty provision without good reason, it would still be the duty of the Commission and of the courts to give effect to the plain language of the statute and not to attempt to pass upon the sufficiency of the reasons which actuated Congress. *Denn v. Reid*, 10 Peters, 522; *American Express Co. v. United States*, 212 U. S. 522.

IV. SECTION 209, IF ITS MEANING WERE DOUBTFUL, SHOULD BE CONSTRUED STRICTLY AGAINST PLAINTIFF IN ERROR

It seems to us that the meaning of section 209 is clear. If it were doubtful, the construction should be adopted which would support the claim of the

Government, because this section operates as a grant of public property to private companies. In *Slidell v. Grandjean*, 111 U. S. 412, at page 437, it was said:

It is also a familiar rule of construction that where a statute operates as a grant of public property to an individual, or the relinquishment of a public interest, and there is a doubt as to the meaning of its terms, or as to its general purpose, that construction should be adopted which will support the claim of the Government rather than that of the individual.

CONCLUSION

We respectfully submit that the judgment of the Court of Appeals should be affirmed.

J. CARTER FORT,

Attorney for Interstate Commerce Commission.

P. J. FARRELL,

Of Counsel.

APPENDIX A

SECTION 209 OF THE TRANSPORTATION ACT, 1920

(For reference to this appendix, see page 2 of the brief)

SEC. 209 (a) When used in this section—

The term "carrier" means (1) a carrier by railroad or partly by railroad and partly by water, whose railroad or system of transportation is under Federal control at the time Federal control terminates, or which has heretofore engaged as a common carrier in general transportation and competed for traffic, or connected, with a railroad at any time under Federal control; and (2) a sleeping-car company whose system of transportation is under Federal control at the time Federal control terminates; but does not include a street or interurban electric railway not under Federal control at the time Federal control terminates, which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic or sale of power, heat, and light, or both;

The term "guaranty period" means the six months beginning March 1, 1920;

The term "test period" means the three years ending June 30, 1917; and

The term "railway operating income" and other references to accounts of carriers by railroad shall, in the case of a sleeping-car company, be construed as indicating the appropriate corresponding accounts in the accounting system prescribed by the Commission.

(b) This section shall not be applicable to any carrier which does not on or before March 15, 1920,

file with the Commission a written statement that it accepts all the provisions of this section.

(c) The United States hereby guarantees—

(1) With respect to any carrier with which a contract (exclusive of so-called cooperative contracts or waivers) has been made fixing the amount of just compensation under the Federal Control Act, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than one-half the amount named in such contract as annual compensation, or, where the contract fixed a lump sum as compensation for the whole period of Federal operation, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than an amount which shall bear the same proportion to the lump sum so fixed as six months bears to the number of months during which such carrier was under Federal operation, including in both cases the increases in such compensation provided for in section 4 of the Federal Control Act;

(2) With respect to any carrier entitled to just compensation under the Federal Control Act with which such a contract has not been made, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than one-half of the annual amount estimated by the President as just compensation for such carrier under the Federal Control Act, including the increases in such compensation provided for in section 4 of the Federal Control Act. If any such carrier does not accept the President's estimate respecting its just compensation, and if in proceedings under section 3 of the Federal Control Act it is determined that a larger or smaller annual amount is due as just compensation, the guaranty under this paragraph shall be increased or decreased accordingly;

(3) With respect to any carrier, whether or not entitled to just compensation under the Federal Control Act, with which such a contract has not been made, and for which no estimate of just compensation is made by the President, and which for the test period as a whole sustained a deficit in railway operating income, the guaranty shall be a sum equal to (a) the amount by which any deficit in its railway operating income for the guaranty period as a whole exceeds one-half of its average annual deficit in railway operating income for the test period, plus (b) an amount equal to one-half the annual sum fixed by the President under section 4 of the Federal Control Act.

(4) With respect to any carrier not entitled to just compensation under the Federal Control Act, which for the test period as a whole had an average annual railway operating income, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than one-half the average annual railway operating income of such carrier during the test period.

(d) If for the guaranty period as a whole the railway operating income of any carrier entitled to a guaranty under paragraph (1), (2), or (4) of subdivision (c) is in excess of the minimum railway operating income guaranteed in such paragraph, such carrier shall forthwith pay the amount of such excess into the Treasury of the United States. If for the guaranty period as a whole the railway operating income of any carrier entitled to a guaranty under paragraph (3) of subdivision (c) is in excess of one-half of the annual sum fixed by the President with respect to such carrier under section 4 of the Federal Control Act, such carrier shall forthwith pay the

amount of such excess into the Treasury of the United States. The amounts so paid into the Treasury of the United States shall be added to the funds made available under section 202 for the purposes indicated in such section. Notwithstanding the provisions of this subdivision, any carrier may retain out of any such excess any amount necessary to enable it to pay its fixed charges accruing during the guaranty period.

(e) For the purposes of this section railway operating income, or any deficit therein, for the test period shall be computed in the manner provided for in section 1 of the Federal Control Act.

(f) In computing railway operating income, or any deficit therein, for the guaranty period for the purposes of this section—

(1) Debits and credits arising from the accounts, called in the monthly reports to the Commission equipment rents and joint facility rents, shall be included, but debits and credits arising from the operation of such street electric passenger railways, including railways commonly called interurbans, as are not under Federal control at the time of termination thereof, shall be excluded;

(2) Proper adjustments shall be made (a) in case any lines which were, during any portion of the period of Federal control, a part of the railroad or system of transportation of the carrier, and whose railway operating income was included in such income of the carrier for the test period, do not continue to be a part of such railroad or system of transportation during the entire guaranty period, and (b) in case of any lines acquired by, leased to, or consolidated with the railroad or system of transportation of the carrier at any time since the end of the test period and prior

to the expiration of the guaranty period, for which separate operating returns to the Commission are not made in respect to the entire portion of the guaranty period;

(3) There shall not be included in operating expenses, for maintenance of way and structures, or for maintenance of equipment, more than an amount fixed by the Commission. In fixing such amount the Commission shall so far as practicable apply the rule set forth in the proviso in paragraph (a) of section 5 of the "standard contract" between the United States and the carriers (whether or not such contract has been entered into with the carrier whose railway operating income is being computed);

(4) There shall not be included any taxes paid under Title I or II of the Revenue Act of 1917, or such portion of the taxes paid under Title II or III of the Revenue Act of 1918 as by the terms of such act are to be treated as levied by an act in amendment of Title I or II of the Revenue Act of 1917; and

(5) The Commission shall require the elimination and restatement of the operating expenses and revenues (other than for maintenance of way and structures, or maintenance of equipment) for the guaranty period, to the extent necessary to correct and exclude any disproportionate or unreasonable charge to such expenses or revenues for such period, or any charge to such expenses or revenues for such period which under a proper system of accounting is attributable to another period.

(g) The Commission shall, as soon as practicable after the expiration of the guaranty period, ascertain and certify to the Secretary of the Treasury the several amounts necessary to make good the fore-

going guaranty to each carrier. The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of each such carrier upon the Treasury of the United States for the amount shown in such certificate as necessary to make good such guaranty. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated.

(h) Upon application of any carrier to the Commission, asking that during the guaranty period there may be advanced to it from time to time such sums, not in excess of the estimated amount necessary to make good the guaranty, as are necessary to enable it to meet its fixed charges and operating expenses, the Commission may certify to the Secretary of the Treasury the amount of, and times at which, such advances, if any, shall be made. The Secretary of the Treasury, on receipt of such certificate, is authorized and directed to make the advances in the amounts and at the times specified in the certificate, upon the execution by the carrier of a contract, secured in such manner as the Secretary may determine, that upon final determination of the amount of the guaranty provided for by this section such carrier will repay to the United States any amounts which it has received from such advances in excess of the guaranty, with interest at the rate of 6 per centum per annum from the time such excess was paid. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, a sum sufficient to enable the Secretary of the Treasury to make the advances referred to in this subdivision.

(i) If the American Railway Express Company shall, on or before March 15, 1920, file with the Com-

mission a written statement that it accepts all the provisions of this subdivision, the contract of June 26, 1918, between such company and the Director General of Railroads, as amended and continued by agreement dated November 21, 1918, shall remain in full force and effect during the guaranty period in so far as the same constitutes a guaranty on the part of the United States to such company against a deficit in operating income.

In computing operating income, and any deficit therein, for the guaranty period for the purposes of this subdivision, the Commission shall require the elimination and restatement of the operating expenses and revenues for the guaranty period, to the extent necessary to correct and exclude any disproportionate or unreasonable charge to such expenses or revenues for such period, or any charge to such expenses or revenues for such period which under a proper system of accounting is attributable to another period, and to exclude from operating expenses so much of the charge for payment for express privileges to carriers on whose lines the express traffic is carried as is in excess of 50.25 per centum of gross express revenue.

For the guaranty period the American Railway Express Company shall pay to every carrier which accepts the provisions of this section, as provided in subdivision (b), hereof, 50.25 per centum of the gross revenue earned on the transportation of all its express traffic on the carrier's lines, and every such carrier shall accept from the American Railway Express Company such percentage of the gross revenue as its compensation. In arriving at the gross revenue on through or joint express traffic, the method of dividing the revenue between the carriers shall be that

agreed upon between the carriers and such express company and approved by the Commission.

If for the guaranty period as a whole the American Railway Express Company does not have a deficit in operating income, it shall forthwith pay the amount of its operating income for such period into the Treasury of the United States. The amount so paid shall be added to the funds made available under section 202 for the purposes indicated in such section.

The Commission shall, as soon as practicable after the expiration of the guaranty period, certify to the Secretary of the Treasury the amount necessary to make good the foregoing guaranty to the American Railway Express Company. The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of such company upon the Treasury of the United States for the amount shown in such certificate as necessary to make good such guaranty. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated.

Upon application of the American Railway Express Company to the Commission, asking that during the guaranty period there may be advanced to it from time to time such sums, not in excess of the estimated amount necessary to make good the guaranty, as are necessary to enable it to meet its operating expenses, the Commission may certify to the Secretary of the Treasury the amount of, and times at which, such advances, if any, shall be made. The Secretary of the Treasury, on receipt of such certificate, is authorized and directed to make the advances in the amounts and at the times specified in the certificate, upon the execution by such company of a contract, secured in such manner as the Secretary may determine, that

upon final determination of the amount of the guaranty provided for by this subdivision such company will repay to the United States any amounts which it has received from such advances in excess of the guaranty, with interest at the rate of 6 per centum per annum from the time such excess was paid. There is hereby appropriated out of any money in the Treasury not otherwise appropriated a sum sufficient to enable the Secretary of the Treasury to make the advances referred to in this subdivision.

APPENDIX B

SUPPLEMENTAL ORDER IN FINANCE DOCKET NO. 2082 UPON APPLICATION OF THE GRAND TRUNK RAILWAY COMPANY OF CANADA UNDER SECTION 20a(12)

(For reference to this appendix, see page 33 of the brief)

Interstate Commerce Commission, Washington, D. C.

SUPPLEMENTAL ORDER

At a session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 22d day of July, A. D. 1922.

In the matter of authorization, under paragraph (12) of section 20a of the Interstate Commerce Act, to hold the positions of officer or director of more than one carrier.

Finance Docket No. 2082

Application of the Grand Trunk Railway Company of Canada in behalf of sundry persons

The application, under said paragraph, so far as it relates to J. E. Dalrymple, J. M. Rosevear, and E. F. Smith, being under further consideration, and it ap-

pearing, after due investigation, that the Chicago, New York & Boston Refrigerator Company is not a carrier within the meaning of that term as used in said section 20a of the Interstate Commerce Act,

1. *It is ordered*, That so much of the Commission's order entered February 20, 1922, in Finance Docket No. 2082, as relates to the holding by J. E. Dalrymple and J. M. Rosevear of positions with the Chicago, New York & Boston Refrigerator Company be, and it is hereby, revoked.

2. *It is further ordered*, That so much of said order entered February 20, 1922, in Finance Docket No. 2082, as relates to the holding by E. F. Smith of positions with the Vermont & Province Line Railroad Company and the Chicago, New York & Boston Refrigerator Company be, and it is hereby, revoked.

3. *It is further ordered*, That except as to the authority herein revoked said order entered February 20, 1922, in Finance Docket No. 2082, shall remain in full force and effect.

4. *And it is further ordered*, That a copy of this order be served upon the Grand Trunk Railway Company of Canada, and that notice of this order be given to the general public by depositing a copy hereof in the office of the Commission's secretary at Washington, D. C.

By the Commission, division 4.

[SEAL.]

GEORGE B. MCGINTY,

Secretary.